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Director of publication – Susanne Nikoltchev, Executive Director, European Audiovisual Observatory

Editorial supervision – Maja Cappello, Head of Department for legal information, European Audiovisual Observatory

Editorial team – Francisco Javier Cabrera Blázquez, Maja Cappello, Sophie Valais

European Audiovisual Observatory

Authors

Elda Brogi (EUI), Nico van Eijk (IViR), Ronan Ó Fathaigh (IViR), Jean-François Furnémont (Wagner & Hatfield), Oliver Gerber (BAKOM), Gianna Iacino (EMR), Marc Janssen (Wagner & Hatfield), Deirdre Kevin (EAO), Tarlach McGonagle (IViR), Alina Ostling (EUI), Francesca Pellicanò (AGCOM), Benjamin Selier (IViR), Sophie Valais (EAO)

Translators / Proof-readers

Aurélié Courtinat, Johanna Fell, Julie Mamou, Maco Polo Traductions, Stefan Pooth, Roland Schmid, Sonja Schmidt, Lucy Turner, Anne-Lise Weidmann

Editorial assistant – Snezana Jacevski

Marketing – Markus Booms, markus.booms@coe.int

Press and Public Relations – Alison Hindhaugh, alison.hindhaugh@coe.int

European Audiovisual Observatory

Publisher

European Audiovisual Observatory

76, allée de la Robertsau F-67000 Strasbourg, France

Tél. : +33 (0)3 90 21 60 00

Fax : +33 (0)3 90 21 60 19

info.obs@coe.int

www.obs.coe.int

Contributing Partner Institution

Institute for Information Law (IViR), University of Amsterdam

Vendelstraat 7, 1012 XX Amsterdam, The Netherlands

Tel: +31 (0) 20 525 3406

Fax: +31 (0) 20 525 3033

ivir@ivir.nl

www.ivir.nl

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Regional and local broadcasting in Europe

Elda Brogi, Nico van Eijk, Ronan Ó Fathaigh, Jean-François Furnémont,
Oliver Gerber, Gianna Iacino, Marc Janssen, Deirdre Kevin, Tarlach McGonagle,
Alina Ostling, Francesca Pellicanò, Benjamin Selier, Sophie Valais





Foreword

Already when considering the strong differences across the various institutional systems across Europe, the word “region” does not have one and only meaning. This is even more true when speaking about media, which do not necessarily reflect administrative structures, but rather give voice to the numerous communities established at any level that is different from the national one. For this reason, when dealing with regional media, we have opted for a large scope and included in our investigation all types of audiovisual media operating at different sub-national levels, both public service and commercial.

This is a sector where national sovereignty is full. Exception made for the conventions promoted by the Council of Europe in the field of national minorities and minority languages and the Recommendations adopted by the Congress of local and regional authorities with the view of promoting regional pluralism and participatory democracy, no approximation exists at international level. At EU level the legislative framework is even less structured, considering that media pluralism as such has always been excluded from the scope of the Audiovisual Media Services Directive, and that licensing procedures for broadcasting services and media ownership rules have never been submitted to harmonisation processes.

The result is a widely variegated outlook, where no common model seems possible to find. There are countries with an extraordinarily high number of local media, as Italy and Spain, others where media at sub-national level are a quite recent reality, as in the UK. Also the market structure itself is difficult to analyse, considering the absence of systematic publication and update of information concerning licenced broadcasters. Apart from the financial crisis, which is affecting regional media all-over Europe, often with dramatic results, also the density of the regulatory frameworks varies enormously, and there seems to be no direct connection between relatively rigid legislations, as in France, or more flexible ones, as in Germany, and success stories of the broadcasters.

The purpose of this publication, which has been taken care of by our partner institution IViR of the University of Amsterdam, is to provide an overview of the often disparate information concerning regional audiovisual media in Europe and to serve as a first reference point for those interested in exploring their legal and operational dynamics. The introductory part sets the scene for the scope of the report and presents the most recent regulatory achievements at European level.

The first part of the report opens with a survey of the current national developments, highlighting those countries where governments have been particularly active in implementing reforms in recent years, touching upon funding systems, advertising and information windows, must-carry mechanisms and frequency allocation. The different national experiences have recently been assessed under the Media Pluralism Monitor promoted by the EU. The results show that none of the countries have fulfilled all of the safeguards considered by the tool. In addition, it points out that despite the availability of legislation on regional media in most countries, only a small number of them seems to have implemented it effectively. A snapshot is provided of regional and local television in Europe from a market perspective, with country by country data on public and private



broadcasters from the MAVISE database of the European Audiovisual Observatory, including specific information on language channels, regional windows and studios.

The second part of the report explores a selection of national case-studies. The total variety of solutions does not allow for a sensible comparative analysis, so the purpose of this selection is rather to collect the countries that show distinctive or interesting features in their regulatory approaches. The selected countries – Germany, Italy, The Netherlands, France, Spain, Switzerland and United Kingdom – present a canvas of possible solutions to the challenges that regional media are facing in the current times of economic crisis and digital convergence. While findability and visibility of regional media within the wide media offer that exists in all European countries is still one of the major obstacles for regional broadcasters to be known and consequently to be consumed, several examples of good practices can be traced while looking at the various national experiences.

All of the above issues are discussed in this *IRIS Special*, which collects contributions from different national experts I would like to thank: Elda Brogi, Jean-François Furnémont, Oliver Gerber, Gianna Iacino, Deirdre Kevin, Alina Ostling, Francesca Pellicanò, Benjamin Selier and Sophie Valais. A special recognition goes to Ronan Ó Fathaigh, Tarlach McGonagle and Nico van Eijk, from the IViR of Amsterdam, who are not only authors, but also the minds and the coordinators behind the research. My acknowledgment also goes to Joan Barata, for valuable input during the drafting process.

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Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

European Audiovisual Observatory



Table of contents

Part 1 – Overview	9
1. Introduction	11
1.1. The importance of regional audiovisual media	11
1.1.1. Terminology	12
1.2. Council of Europe framework	12
1.2.1. European Convention on Human Rights	13
1.2.2. Framework Convention for the Protection of National Minorities (FCNM)	13
1.2.3. The European Charter on Regional or Minority Languages (ECRML)	14
1.2.4. Non-treaty-based standard-setting	16
1.2.4.1. Committee of Ministers	16
1.2.4.2. Parliamentary Assembly	18
1.2.4.3. Congress of Local and Regional Authorities	18
1.3. Structure of publication	19
2. Current national developments	23
2.1. United Kingdom: creating a regional audiovisual framework	24
2.1.1. Independent production exemptions	25
2.1.2. Media-ownership rules	25
2.2. Flexibility and funding	26
2.2.1. Switzerland	26
2.2.2. Spain	27
2.2.3. Germany	28
2.3. Consolidation and efficiency	28
2.3.1. The Netherlands	28
2.3.2. Portugal	29
2.4. Advertising and regional windows	30
2.4.1. Germany	30
2.4.2. Russian Federation	31
2.5. Must carry and the digital switchover	32



2.5.1. Romania	32
2.5.2. Russian Federation.....	33
2.5.3. France.....	33
2.5.4. The Netherlands: must-carry exemptions	34
2.6. Italy: frequency allocation.....	35
2.7. Closures	35
2.8. Conclusion	35
3. Regional and local pluralism: the Media Pluralism Monitor tool and the results of the 2015 implementation.....	37
3.1. Introducing the Media Pluralism Monitor (MPM)	37
3.2. The MPM2015 approach to regional and local media	39
3.3. The MPM2015 analysis on regional and local media.....	39
3.3.1. Legal safeguards and support measures for regional and local media	39
3.3.2 The role of the PSM.....	41
3.4. The new version of the MPM in 2016	43
3.5. Conclusion	43
4. Regional and local television in Europe: a vast and varied panorama	45
4.1. The varied nature of public regional broadcasting in Europe.....	45
4.1.1. Distinct regional public broadcasting companies	46
4.1.2. Associated regional public broadcasting companies	47
4.1.3. National public broadcaster with sub-units for languages	47
4.1.4. Specific language channels (associated with specific regions)	47
4.1.5. Regional public service channels of the national public broadcasters	48
4.1.6. Regional (broadcast) windows of national public broadcasters.....	48
4.1.7. Regional studios of national public broadcasters as production centres.....	49
4.2. The private side of regional and local television.....	51
Part 2 – Regional and local broadcasting in selected countries	55
5. Germany	57
5.1. General Introduction	57
5.2. Regulatory Framework	57
5.2.1. Regional window programmes	58
5.2.2. Regional advertising.....	58



5.2.3. Opt-out clause.....	59
5.2.4. Platform occupancy	59
5.3. Market Overview.....	59
5.4. Recent developments.....	60
5.4.1. Federal Administrative Court’s decision on regional advertising and its consequences.	60
5.4.2. Regional windows: procedural rules and constitutionality	61
5.5. Current and future challenges.....	62
6. Italy	63
6.1. General introduction	63
6.2. The legal framework: the “local scope” and the fundamental principle of the local media activity	64
6.3. Regulatory overview, the market, and the financing of the sector	65
6.4. A specific aspect of the Italian system: the “regional public service broadcasting”	66
6.5. Recent developments.....	67
6.6. Conclusions.....	68
7. The Netherlands	69
7.1. General introduction	69
7.2. Regulatory framework.....	70
7.3. Market overview	71
7.4. Specific issues regarding regional public broadcasting in the Netherlands	71
7.5. Recent developments.....	72
7.6. Concluding remarks.....	74
8. France	75
8.1. General introduction	75
8.2. Regulatory aspects concerning regional and local channels.....	76
8.2.1. Authorisation procedures	76
8.2.2. The regional public service offer.....	77
8.2.3. Local variations of the national channels.....	78
8.2.4. Local channels operated by local authorities.....	78
8.2.5. Arrangements to counter concentration.....	78
8.2.6. Regulation of content and advertising.....	79
8.2.7. The must-carry obligation incumbent on local public-sector channels.....	80
8.3. The local and regional television landscape in France	80



8.3.1. Overview	80
8.3.2. Characteristics of the regional and local channels.....	80
8.3.3. Income and economic viability	81
8.3.4. France 3.....	82
8.4. Final comments	84
9. Spain	85
9.1. General introduction	85
9.2. Regulatory framework.....	86
9.3. Market overview	88
9.4. Specific issues	88
9.5. Recent developments.....	89
9.6. Current and future challenges.....	90
10. Switzerland	91
10.1. Introduction.....	91
10.2. Legal parameters.....	92
10.2.1. The broadcasting remit in the Federal Constitution.....	92
10.2.2. Legislation of regional public service TV	92
10.2.2.1. Typology of broadcasters in the law	92
10.2.2.2. Award of a concession.....	93
10.2.2.3. Regional remit with input and output criteria	94
10.2.2.4. Right to a share of broadcast-reception licence fees (fee-splitting).....	94
10.2.2.5. Coverage areas	95
10.2.2.6. Must-carry privilege	95
10.2.2.7. Supervision	96
10.3. Challenges	96
10.4. Ongoing developments	97
10.4.1. More fee-splitting	98
10.4.2. Relaxing the advertising rules	98
10.4.3. Subsidised subtitling	98
10.4.4. Promotion of digitisation	99
10.4.5. Relaxation of the rules on competitive concentration	99
10.4.6. Abolition of the regional restriction on distribution.....	100
10.5. Outlook.....	101
10.5.1. Public service broadcasting and imminent renewal of concessions.....	101



10.5.2. Success through co-operation?.....	101
11. United Kingdom	103
11.1. General introduction	103
11.2. Regulatory framework.....	104
11.3. Market overview	105
11.4. Specific issues	107
11.5. Recent developments.....	107
11.6. Current and future challenges.....	108
Part 3 – The future of regional and local broadcasting	109
12. Viable local and regional television channels.....	111
12.1. Introduction.....	111
12.2. Hostile economic context.....	111
12.3. Unfavourable developments in consumption modes	112
12.4. Grounds for optimism	112
12.5. The absence of a model	114
12.6. Conclusion: determining elements	115
13. Concluding remarks	117





Part 1 - Overview





1. Introduction¹

Tarlach McGonagle and Nico van Eijk, IViR

1.1. The importance of regional audiovisual media²

The media play a number of crucial roles in democratic society, most notably the role of public watchdog; the role of creating channels for the circulation of information and ideas; and the role of providing forums for public debate. The media's forum-providing role is particularly important for fostering participatory democracy because the media can open up shared spaces for discussion and debate on matters of public interest. Such discursive spaces can be created at different geographical levels, which exhibit different features.

Media operating at the regional level have special democratic significance as the relationship between regional media and persons from the areas and communities they serve tends to be closer than equivalent relationships at, for e.g., the national or international levels. That proximity is often evident in audience/readership/user statistics and in levels of participation in the media.

The special democratic significance of regional media can also be gauged by the nature and focus of regional journalism. This is due, firstly, to regional journalism's coverage of regional politics and issues that are either underrepresented in, or absent from, national journalism. It is also useful to point out that while regional media are the primary outlet for regional journalism, regional media are not necessarily or exclusively concerned with journalistic activities. It should also be recognised that emergent trends of collaborative or so-called citizen journalism show significant similarities with news-related community media activities.

Secondly, regional journalism also fosters public discussion of, and engagement with, regional politics and issues. The proximity of regional media to their target communities is therefore also political in character. This extends to social media (e.g. Facebook and Twitter) because they are an increasingly important source of information and tool for engagement when it comes to regional politics and issues, particularly during the run-up to regional elections or referenda.

¹ This text is an abridged and reworked version of a 2014 study by the same authors which was used for the Council of Europe's Congress of Local and Regional Authorities as the Explanatory Memorandum to its Resolution 374 (2014) of 15 October 2014 on the role of regional media as a tool for building participatory democracy, and to its Recommendation 364 (2014) of 15 October 2014 on the role of regional media as a tool for building participatory democracy.

² For a more extensive exploration of the theoretical and conceptual framework governing regional media, see *ibid.*



The communicative space created by regional media allows regional identities (including cultural, linguistic and religious identities) to be explored, developed, sustained and promoted to a greater extent than is usually possible at the national level. Regional identities and languages are sometimes marginalised by dominant/mainstream national media, which underscores the importance of regional media as alternative discursive forums. Regional languages are a case in point: their vibrancy in society is often dependent on the availability and accessibility of regional media operating in those languages.

The shared nature of the communicative space created by regional media also facilitates inter-cultural dialogue, understanding and tolerance and thus contributes to the pre-emption and countering of hate speech.

Well-designed regulation and policy – at the European and national levels - can create an enabling environment for regional media. Various bodies of the Council of Europe have adopted standards, some legally-binding, some politically influential, that seek to create such an enabling environment. However, the overall body of relevant standards is not coherent and their value and impact are, to a large extent, contingent on the adequacy of corresponding or complementary standards at the national level. Part I of this publication provides an overview of relevant standards and markets at the European level, while Part II explores in detail the standards and market situations at the national level.

1.1.1. Terminology

The term “regional media” is open to multiple interpretations or definitions and in principle covers print, broadcast and digital media. For the purposes of this publication, though, the focus is on regional audiovisual media. This term is understood and used broadly as comprising a range of different types of audiovisual media operating at different sub-national levels. It includes public service, community, commercial, local and even, in certain circumstances, transfrontier audiovisual media. In practice, it can be difficult to distinguish between regional and local media, particularly in comparative or cross-country analyses. Sub-national media are subject to different regulatory frameworks and are characterised by different organisational structures. In the absence of clear consensus about the demarcation of regional and local media this publication has opted for a pragmatic approach. It therefore avoids trying to pin down “regional audiovisual media” in a hard definition and instead emphasises commonalities and differences between regional and local audiovisual media as appropriate and as required by differences of terminology in different countries.

1.2. Council of Europe framework

This section examines how the theories, concepts and definitions discussed in the previous section are articulated in relevant European standards. It provides an overview and analysis of a selection of relevant Council of Europe standards. The Council of Europe has developed an elaborate system of standards and mechanisms that seek to create an enabling environment for freedom of expression and media freedom.



1.2.1. European Convention on Human Rights

Article 10 of the European Convention on Human Rights, which guarantees everyone the right to freedom of expression, is at the heart of the Council of Europe's system. In its interpretation of Article 10, the European Court of Human Rights has repeatedly stressed the instrumental importance of journalists and the media for enhancing public debate in democratic society. The media can make important contributions to public debate by (widely) disseminating information and ideas and thereby contributing to opinion-forming processes within society. As the Court consistently acknowledges, this is particularly true of the audiovisual media because of their reach and impact. The Court has traditionally regarded the audiovisual media as more pervasive than the print media and now considers the Internet to be a medium with "no less powerful an effect than the print media".³ The media can also make important contributions to public debate by serving as forums for discussion and debate.⁴ This is especially true of regional media, by virtue of their close physical proximity to their audiences. It is also especially true of new media technologies which hold considerable potential for high levels of individual and group participation in society.⁵ The Court recently strengthened its traditional support for individual participation in public debate⁶ by expressly referring to the notion of "citizen journalism".⁷

Although the Court only has limited case-law dealing specifically with regional media, many of its more general principles concerning pluralism, participation, the media and democracy are also relevant for regional audiovisual media.⁸

1.2.2. Framework Convention for the Protection of National Minorities (FCNM)

The FCNM sets out a range of rights to be enjoyed by persons belonging to national minorities. Article 9 concerns the right to freedom of expression and access to the media and Article 6 concerns, inter alia, tolerance and intercultural dialogue. The Advisory Committee (AC) that monitors the FCNM frequently focuses on the impact of geographical, technological and market-related factors on the effectiveness of national minorities' access to the media. Such focuses imply consideration of whether the geographical reach of particular media targeting a particular minority group matches the actual demographic concentration of that minority. Useful distinctions in this regard include: sub-national (i.e. local and regional), national and transfrontier reach. Another consideration is the suitability of the means of distribution for media content. In other words, is the distribution platform in question accessible to, and widely used by, members of the target minority group? Finally, as regards market-related factors: media output catering for the interests of national minorities and/or in their languages is often less lucrative than mainstream equivalents. This can make it difficult for media to secure investment capital and advertising, which in turn makes it difficult for them to

³ *Fatullayev v. Azerbaijan*, no. 40984/07, § 95, 22 April 2010.

⁴ *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 27, 14 April 2009.

⁵ *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 49, ECHR 2012.

⁶ *Steel and Morris v. the United Kingdom*, no. 68416/01, ECHR 2005-II.

⁷ *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, § 52, ECHR 2015.

⁸ See, for example, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, ECHR 2004-I.



operate independently and efficiently. Such difficulties militate against the growth of minority (language) media, thereby maintaining access opportunities at a low level.⁹

The AC also tends to distinguish between access to different types of media, e.g. public-service, community and commercial, each of which can serve the expressive and informational needs and interests of persons belonging to national minorities in different ways. Given that the media comprise content, structures and processes, regulation tends to be both behavioural and structural. The AC therefore monitors prescriptions of particular types of content (e.g. broadcasting quota and percentages of programming budgets), such as that produced by or for minorities, including in their own languages. It also monitors the allocation of time-slots for minority programming with a view to determining whether they are long enough, frequent enough and scheduled at appropriate times. Subtitling and dubbing practices are also routinely monitored on account of their potential for making content accessible to a wider audience comprising varied linguistic backgrounds. The need for broadcast licensing processes to recognise and accommodate the needs, interests and situational specificities of national minorities is another recurrent priority theme. The general question of the official recognition of national minorities and their languages (to the extent that the applicability of media laws and policies is conditional on the enjoyment of official status) is often addressed as well.

1.2.3. The European Charter on Regional or Minority Languages (ECRML)

The central purpose of the ECRML is to protect and promote regional or minority languages in Europe. It recognises that regional or minority languages are a “threatened aspect of Europe’s cultural heritage” and therefore merit protection and promotion.¹⁰ The Charter’s dual strategy is to focus on (i) non-discrimination as regards the use of regional or minority languages, and (ii) measures offering active support for such languages.¹¹ The promotional measures set out in the Charter concentrate on the use of regional or minority languages in specific spheres of public life. The contemplated promotional measures – in a range of pertinent contexts – are seen as a means through which regional or minority languages may be “compensated, where necessary, for unfavourable conditions in the past and preserved and developed as a living facet of Europe’s cultural identity”.¹² As such, the objective of cultural and linguistic diversity also informs the Charter’s approach.¹³

In terms of scope, the Charter covers “regional or minority languages”, which are defined as languages: “(i) traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and (ii) different from the official language(s) of that State”.¹⁴ Furthermore, “dialects of the official language(s) of the State or the languages of migrants” are not included in the definition of regional or minority languages.¹⁵

⁹ See generally: Mike Cormack & Niamh Hourigan, Eds., *Minority Language Media: Concepts, Critiques and Case Studies* (Clevedon, Multilingual Matters Ltd., 2007).

¹⁰ Explanatory Report to the European Charter for Regional or Minority Languages, para. 10.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*, para. 11.

¹⁴ Article 1(a), ECRML.

¹⁵ *Ibid.* For further explanation, see the Explanatory Report to the Charter, *op. cit.*, paras. 30-33.



Article 11 is the Charter's principal article concerning the right to freedom of expression and the media.¹⁶ It opens with an acknowledgement that national public authorities have varying levels of competence in respect of media regulation and oversight, and a call for the principle of "the independence and autonomy of the media" to be respected (Article 11(1)). The main substantive focuses of the Article are:

- public service radio and television (Article 11(1)(a));
- radio and television generally (Article 11(1)(b) and (c), respectively);
- production and distribution of audio and audiovisual works (Article 11(1)(d));
- newspapers (Article 11(1)(e));
- funding for media/audiovisual production (Article 11(1)(f));
- support for the training of journalists and media professionals (Article 11(1)(g));
- freedom of direct reception and non-opposition of retransmission of radio and television broadcasts from neighbouring countries (Article 11(2));
- non-restriction of free circulation of information in the written press (Article 11(2)), and
- representation/taking into account of interests of regional or minority language speakers within bodies with "responsibility for guaranteeing the freedom and pluralism of the media" (Article 11(3)).¹⁷

States Parties are required to choose and apply at least one paragraph or sub-paragraph from Article 11. Most of the paragraphs and sub-paragraphs contain internal choices between commitments of varying degrees of onerousness. The extent of the available choice is widened further by recurrent reliance on the formula "to encourage and/or facilitate" [particular measures]. For instance, Article 11(1)(a) offers States a choice between the following options in respect of their public service broadcasting systems:

- 1) to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or
- 2) to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or
- 3) to make adequate provision so that broadcasters offer programmes in the regional or minority languages.

The ability to make internal choices within paragraphs therefore clearly offers States a high degree of flexibility in determining the precise focus and extent of their commitments in respect of the media.

Many of the key issues identified by the Advisory Committee on the FCNM are also regularly flagged by the Charter's Committee of Experts. Engagement with these issues is similar to the

¹⁶ See further, Jean-Marie Woehrling, *The European Charter for Regional or Minority Languages: A critical commentary* (Strasbourg, Council of Europe Publishing, 2005), pp. 200-214, and very comprehensively, Tom Moring & Robert Dunbar, *The European Charter for Regional or Minority Languages and the Media* (Strasbourg, Council of Europe Publishing, 2008).

¹⁷ It should be noted that each of these focuses pertains specifically to regional or minority languages.



engagement under the FCNM, but predictably with extra scrutiny of their linguistic dimension.¹⁸ Also, as one would expect, there is systematic attention paid to the impact of general language policy on media activities in regional or minority languages. The impact of the media on the public profile, prominence and prestige enjoyed by regional or minority languages is also a recurrent issue. Arising from Article 11(3) of the ECRML, the representation of interests of speakers of regional or minority languages in media regulatory/monitoring authorities is frequently addressed. Article 11(3) addresses an additional dimension to the questions of representation and participation in the media discussed at the beginning of this chapter. Ensuring that the interests of the users of regional or minority languages are taken into account in bodies charged with guaranteeing freedom and pluralism of the media is a very important and potentially far-reaching policy goal. It strives for the institutional incorporation of minority interests in bodies which often have considerable influence on law and policy-making. Such policies can be regarded as outgrowths of more general democratic principles and they greatly enhance the likelihood that future regulation and policy will reflect and cater for the needs and interests of linguistic minorities.¹⁹

1.2.4. Non-treaty-based standard-setting

As mentioned above, the case-law of the European Court of Human Rights dealing specifically with distinctive features of regional media is limited. In practice, the FCNM and ECRML compensate for that – to an extent – by focusing on minority-specific and linguistic issues that are relevant for (some) regional media. Other standard-setting work, for instance by the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities, complements the treaty-based approaches by spelling out the relevance of the Court’s general principles for regional media.

1.2.4.1. Committee of Ministers

Several texts adopted by the Committee of Ministers merit special mention in this connection. The first focuses on the role of community media in promoting social cohesion and intercultural dialogue and two others focus on different – but related – aspects of media pluralism and diversity of content and concentration of ownership.

The Committee of Ministers’ 2009 Declaration on the role of community media in promoting social cohesion and intercultural dialogue²⁰ explains in detail the distinctive characteristics of community media and their functional importance to society. It recognises “community media as a distinct media sector, alongside public service and private commercial media” and stresses the need to examine ways in which legal frameworks could be adapted in order to facilitate the development and optimal functioning of community media. It favours allocating a sufficient number of (analogue

¹⁸ See further: Tom Moring & Robert Dunbar, *The European Charter for Regional or Minority Languages and the Media*, *op. cit.*

¹⁹ See further, Tarlach McGonagle, “Introduction to and Summary of the Survey of State Practice: ‘Minority-Language Related Broadcasting and Legislation in the OSCE’”, in George Jones, Sally Holt & John Packer, Eds., 8 *Mercator Media Forum* (2005), pp. 84-99, at p. 95. For an analysis of the practical shortcomings of Article 11(3), ECRML, see: Robert Dunbar, “Definitively interpreting the European Charter for Regional or Minority Languages: the legal challenges”, in Robert Dunbar, Gwynedd Parry & Simone Klinge, Eds., *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Regional or Minority Languages, No. 5) (Strasbourg, Council of Europe Publishing, 2008), pp. 37-61, at pp. 50-51.

²⁰ Declaration on the role of community media in promoting social cohesion and intercultural dialogue, 11 February 2009, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d1bd1.



and digital) frequencies to community media and ensuring that community media are not disadvantaged by the digital switch-over. It advocates educational and vocational measures geared towards maximising all communities' use of available technological platforms.

The Declaration also "[S]tresses the desirability of":

- exploring various funding possibilities for the community media sector;
- promoting good practice in community media, *inter alia*, through conducting studies, exchanging information and programmes and other collaborative projects;
- facilitating appropriate capacity-building and training of community media workers;
- "encouraging the media's contribution to intercultural dialogue", *e.g.* by establishing networks on which to exchange information.

As such, this Declaration is very much in the tradition of earlier standard-setting work by the Committee of Ministers that emphasises the important social and democratic contributions that can be made by the media, especially as regards the promotion of societal tolerance.²¹ The particular role of community media in fostering societal cohesion and intercultural exchanges and understanding at the regional and local levels is largely explained by their participatory objectives and accessibility to the communities they serve.

For its part, the Committee of Ministers' 2007 Declaration on protecting the role of the media in democracy in the context of media concentration²² is very forthright in its recognition of the symbiotic relationship between media freedom, pluralism and democracy. It underscores the importance of the media in facilitating effective participation in democratic processes and the development of a "democratic and participatory public sphere". The Declaration acknowledges "the opportunities offered by the development of new communication services and of phenomena such as multimedia, alternative media, community media and consumer-generated content on the Internet, but aware also that their opinion-shaping impact is often dependent upon their content being carried in or reported by mainstream media". Based on that insight, it stresses that "policies designed to encourage the development of not-for-profit media can be another way to promote a diversity of autonomous channels for the dissemination of information and expression of opinion, especially for and by social groups on which mainstream media rarely concentrate".

The Committee of Ministers' 2007 Recommendation on media pluralism and diversity of media content²³ is also cognisant of "the crucial contribution of the media in fostering public debate, political pluralism and awareness of diverse opinions, notably by providing different groups in society – including cultural, linguistic, ethnic, religious or other minorities – with an opportunity to receive and impart information, to express themselves and to exchange ideas". It recommends that media ownership rules "should be adapted to the size and the specific characteristics of the national, regional or local audiovisual media and/or text-based media market to which they would be applicable" (para. 2.2). It also calls on Council of Europe member states to "take any financial and regulatory measures necessary to protect and promote structural pluralism of audiovisual and print

²¹ See, for example, Committee of Ministers' Recommendation Rec (2003) 9 on measures to promote the democratic and social contribution of digital broadcasting, 28 May 2003 and Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance, 30 October 1997.

²² Declaration on protecting the role of the media in democracy in the context of media concentration, 31 January 2007.

²³ Recommendation CM/Rec(2007)2 on media pluralism and diversity of media content, 31 January 2007.



media” (para. 6.1). In the general spirit of the Recommendation, this would have particular consequences for regional media.

1.2.4.2. Parliamentary Assembly

The Parliamentary Assembly has traditionally been a strong supporter of regional and local newspapers and radio. More recently, it has drawn attention to the regional dimension of public service broadcasting and in particular the need to support it with adequate funding.²⁴ Another more recent focus has been the need to promote the use of minority (and/or regional) languages via the media.²⁵

1.2.4.3. Congress of Local and Regional Authorities

The Congress of Local and Regional Authorities’ approach to regional media was for some time set out primarily in its Recommendations and Resolutions on the state of regional print media in Europe – Pluralism, independence and freedom in regional press (2002) and on regional media and transfrontier co-operation (2005).²⁶ These texts are less widely known than Committee of Ministers’ texts, but their sharp focus on regional media, coupled with the detailed, tailored nature of the measures they propose to different stake-holders, means that they can play an important role in bridging more general Council of Europe standards and policy and practice in Council of Europe Member States.

As their title suggests, the Recommendation and the Resolutions on the state of regional print media in Europe – Pluralism, independence and freedom in regional press, examine the economic situation of the regional press and the implications of financial precariousness and concentrations of ownership for pluralistic democratic society. Both the Recommendation and the Resolutions put forward a range of measures that could usefully be pursued by a variety of stake-holders in order to ameliorate pluralism among regional media.

In 2014, the Congress re-invigorated its approach to regional media in its Recommendation and Resolution on the role of regional media as a tool for building participatory democracy.²⁷ In its Resolution 374 (2014), the Congress invites regional authorities of Council of Europe Member States to, *inter alia*:

- a. *recognise the role of regional media in promoting participatory democracy, and revise the existing regional regulatory frameworks to adapt them to the new media environment [...];*

²⁴ The Funding of Public Service Broadcasting, Recommendation 1878 (2009), Parliamentary Assembly of the Council of Europe, 25 June 2009.

²⁵ The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance cooperation and synergy with the OSCE, Recommendation 1773 (2006), Parliamentary Assembly of the Council of Europe, 17 November 2006.

²⁶ Resolution 145 (2002) on the state of regional print media in Europe – Pluralism, independence and freedom in regional press, 6 June 2002; Recommendation 119 (2002) on the state of regional print media in Europe – Pluralism, independence and freedom in regional press, 6 June 2002; Resolution 203 (2005) on regional media and transfrontier co-operation, 2 June 2005; Recommendation 173 (2005) on regional media and transfrontier co-operation, 2 June 2005.

²⁷ Resolution 374 (2014) on the role of regional media as a tool for building participatory democracy, 15 October 2014; Recommendation 364 (2014) on the role of regional media as a tool for building participatory democracy, 15 October 2014.



- b. *ensure continued support for regional public service media, enjoying independent editorial control and organisational autonomy and providing distinctive content on all services and platforms;*
- c. *support and facilitate the development of non-profit media, especially community media, in particular by avoiding licensing regimes for new media, ensuring sufficient frequency allocation and exploring various funding possibilities [...];*

These priorities stress the need for regulation to facilitate the operation of regional media – especially public service media and community media - in a changing media environment.

In Recommendation 364 (2014), the Congress asks the Committee of Ministers to invite Member States of the Council of Europe to, *inter alia*:

- c. *include regional media within the existing media subsidies and use specific subsidy schemes for the promotion of regional journalism;*
- d. *support regional efforts to maintain regional public service media, and to develop non-profit media, in particular community media;*
- e. *take financial and regulatory measures necessary to protect and promote structural pluralism of audiovisual and print media, seeking greater transparency in media ownership rules;*
- f. *support measures to bridge the ‘digital divide’ and promote media literacy at the regional level [...].*

These priorities acknowledge that besides suitable regulation, financial support is also crucial for the continued viability of regional media, especially public service media and community media.

1.3. Structure of publication

The principal goal of this publication is to collect the often disparate information concerning regional audiovisual media in Europe and present and analyse it in a comprehensive and coherent manner. It aims to serve as a first reference point or port-of-call for those interested in exploring the legal and operational dynamics of regional audiovisual media in detailed fashion.

Part I opens with an overview and analysis of the main features of regional media; their societal importance; the European-level law and policy frameworks governing them; and the markets in which they operate. Particular attention is paid to the importance of regional audiovisual media for democracy, pluralism and cultural life. This section includes an overview of recent and ongoing law and policy developments concerning the regional audiovisual media throughout Europe.

Part II examines similar themes and angles across a selection of national perspectives. Building on a wider geographical canvas provided by Chapter 2, this section presents more in-depth studies of a number of country situations: Germany, France, Italy, the Netherlands, Spain, Switzerland and the United Kingdom. Each of the case studies reveals particular features concerning how regional media are regulated and how they operate.



These countries have been chosen largely because of the distinctive or interesting features that their (regulatory) approaches to regional (and local) audiovisual media exhibit.²⁸ In most cases, the influence of the administrative organisation of the State in shaping the landscape for regional audiovisual media is evident.

In the German system, the ARD, as an association of nine independent public service broadcasters, provides a nationwide programme. In addition, each *Land* broadcaster has its own regional programming. As described in Chapter 5 (and also in Chapter 2), the use of regional windows is of particular importance in Germany, and detailed legislation and case law dealing with the use of regional windows for both programming and advertising purposes has proven influential in shaping the regional audiovisual media sector.

In Italy, the PSB is subject to legislative and contractual obligations to guarantee an adequate service of information at a regional and provincial level. The PSB channel *RAI 3* uses regional windows for broadcasting local information and programming, and its approach includes strategies for the dissemination of some regional content beyond its target area (see further, Chapter 6).

Recent legislative changes in the Netherlands provide for the establishment of a new, centralised body (*Regionale Publieke Omroep* – RPO) to be responsible for public service regional broadcasting in the country (thereby replacing the foundation that until now played a facilitative role *vis-à-vis* regional broadcasters). The RPO will be awarded an exclusive concession for 10 years to provide regional public service broadcasting; Chapter 7 sets out the conditions and review mechanisms governing the operation of the RPO.

Historically, the French audiovisual landscape has featured a highly centralised model favouring national channels with local variations rather than a rich offer of local and regional channels. This tendency began to be reversed in the early 1980s in parallel with the process of territorial decentralisation and more particularly the development of terrestrially-broadcast digital television (DTTV), which made a real boom in local and regional channels possible in France (see Chapter 8). The Spanish system for regional audiovisual media is influenced by the country's political structure of autonomous communities. An interesting feature of the Spanish system, resulting from legislative changes in 2012, is the provision that allows the autonomous communities to provide for public service broadcasting or alternatively to issue a call for tenders to award the licences to commercial broadcasters. This creates space for the exploration of public-private models for regional broadcasting. The Spanish system has also been defined in recent years by the sweeping financial cutbacks that have been a major factor in the closure of regional and local broadcasters (for details, see Chapter 9).

In Switzerland, reflection and discussion on the future of public service media, including at the regional level, are advanced. As is set out in detail in Chapter 10, local and regional audiovisual media in Switzerland are subject to various obligations relating to their coverage area and concerning information transmissions during primetime. They enjoy must-carry status and as a result of a recent legislative amendment, they have been given an increased share of the revenue generated by the broadcasting licence fee.

In the United Kingdom, the regional broadcasting system is structured around the devolved nations - Northern Ireland, Scotland and Wales - and the nine government administrative regions in

²⁸ For a more comprehensive overview, see: EPRA, "Ad hoc Working Group 3: Local/Regional TV: Financing Models - Background Comparative Document", December 2015,

http://epra3-production.s3.amazonaws.com/attachments/files/2718/original/Local_regionalTV_financing_models_WG3_final.pdf?1450254242.



England. Regional broadcasting is assured first by BBC 1 – a networked channel throughout the regions comprising BBC Northern Ireland, BBC Scotland, BBC Wales and 12 regional windows in England. It is governed by the Royal Charter, which is currently under review. Regional broadcasting is assured secondly by ITV/the so-called Channel 3 licences: private broadcasting licences that contain a number of public service obligations, including regional production. In addition, S4C broadcasts nationally in Welsh and in Scotland, BBC Alba - a joint venture between the BBC and MG Alba – broadcasts in Scottish Gaelic. As explained in Chapter 11, legislation also provides for electronic programme guides to give prominence to local television services.

Part III focuses on the challenges facing regional audiovisual media, in particular their quest for continued sustainability in the context of expanding technologies and diminishing income. The conclusions bring together and consolidate the various strands of the publication.





2. Current national developments

Ronan Ó Fathaigh, IViR

The purpose of this chapter is to provide an overview of recent and ongoing developments concerning regional audiovisual media in Europe. The overview focuses in particular on legal and policy initiatives taken by governments and regulators throughout Europe to strengthen regional audiovisual media. In addition, this chapter also highlights a number of relevant judicial developments. As detailed below, governments have been quite active in implementing legislative and policy reform in recent years.

However, it is important to first outline the general context in which European regional audiovisual media currently exists. For instance, following the closure of 25 local and regional stations in Sweden in April 2014, the Secretary General of the European Association of Regional Television described it as part of a “very disturbing trend in Europe,” and “clearly shows that we need to bring the threat to regional broadcasting, in the end democracy, to the attention of the EU.”²⁹

Similarly, a recent study for the Swiss Federal Office of Communications, which examined local and regional television in Europe, began by noting that its initial assessment prompted “a degree of pessimism.”³⁰ Indeed, the study noted that local and regional television services are “by far the most affected” by the global financial crisis, resulting in some “catastrophic situations.”³¹ However, the study did conclude with “an optimistic conclusion and prospects in the future.”³² Further, a background document of the European Platform of Regulatory Authorities remarked that local and regional television stations “generally cannot cover their costs themselves and are dependent on public support.”³³

²⁹ European Association of Regional Television, “Swedish commercial television closing all regional stations”, 15 April 2014, <http://www.circom-regional.eu/news1-2/698-swedish-commercial-television-closing-all-regional-stations>.

³⁰ Wagner-Hatfield consulting group, ‘Perspectives de développement de la télévision régionale’ (‘Prospects for regional television’), June 2015, p. 2. Brief summary available in English at: <https://www.bakom.admin.ch/bakom/en/homepage/electronic-media/zahlen-und-fakten/studies/regional-tv--the-challenges.html>.

³¹ Wagner-Hatfield study, Brief summary, *op. cit.* p. 2.

³² Wagner-Hatfield study, Brief Summary, *op. cit.* p. 15.

³³ See European Platform of Regulatory Authorities, “Ad hoc Working Group 3: Local/Regional TV: Financing Models - Background Comparative Document”, *op. cit.* .



2.1. United Kingdom: creating a regional audiovisual framework

While the introductory remarks highlighted the difficulties facing regional audiovisual media in Europe generally, it is perhaps important to begin with an example of an initiative to create a regional audiovisual sector that had hardly existed a few years ago. This occurred recently in the United Kingdom, following the introduction of important legislation. The legislation was designed to enable the establishment of a new legal framework to put one element of regional audiovisual media, namely local television, “on a strong and sustainable footing for the first time.”³⁴

The initiative began in 2011, with the publication of the UK government’s policy paper, “*A new framework for local TV in the UK*”, which noted that “only a tiny handful of independent services have attempted to provide commercially sustainable local TV focused solely on particular cities or smaller geographic areas.”³⁵ The UK government’s plans comprised three key components to establishing a commercially viable local audiovisual media sector: (a) reserve sufficient spectrum for local broadcasting; (b) create a new licensing regime for local broadcasting; and (c) secure electronic programme guide prominence for local broadcasting.³⁶

Following a period of consultation, three significant pieces of legislation came into force in 2012: first, the Local Digital Television Programme Services Order,³⁷ which set out the framework for licensing local television. Second, the Wireless Telegraphy Act 2006 (Directions to OFCOM) Order was passed,³⁸ which required the communications regulator Ofcom to reserve spectrum for local television broadcasting. Third, the Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order was passed,³⁹ which was designed to give prominence to local television services on the electronic programme guide (EPG). Of particular note, the UK government was of the view that EPG prominence was “appropriate to reflect the public service nature of the content that will be provided; as well as being crucial to assisting the commercial viability of the new local licensees (i.e. greater visibility on EPGs is likely to boost viewing figures, which in turn generates increased advertising revenue).”⁴⁰ It also considered that EPG prominence would “be important in terms of attracting viewers which in turn leads to financial viability and gives local TV a ‘foothold’ in the broadcasting market.”⁴¹

In addition to the creation of a legislative framework for local television, crucial funding was also made available. First, £25 million (EUR 31 million) of licence fee funds were made available for the initial capital costs for setting up local television,⁴² which the European Commission approved

³⁴ Department for Culture, Media and Sport, “A new framework for local TV in the UK”, July 2011, p. 4, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72920/Local-TV-Framework_July2011.pdf.

³⁵ Department for Culture, Media and Sport, “A new framework for local TV in the UK”, cit., p. 11.

³⁶ Department for Culture, Media and Sport, “A new framework for local TV in the UK”, cit., p. 33.

³⁷ The Local Digital Television Programme Services Order 2012, <http://www.legislation.gov.uk/ukxi/2012/292/contents/made>.

³⁸ The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2012, <http://www.legislation.gov.uk/ukxi/2012/293/contents/made>.

³⁹ The Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011, <http://www.legislation.gov.uk/ukxi/2011/3003/contents/made>.

⁴⁰ Explanatory Memorandum to the Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011, para. 8.3, http://www.legislation.gov.uk/ukxi/2011/3003/pdfs/ukxiem_20113003_en.pdf.

⁴¹ Explanatory Memorandum to the Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011, cit., para. 8.3.

⁴² BBC, “Local television funding agreement”, 26 July 2013, http://www.bbc.co.uk/bbctrust/our_work/strategy/licence_fee/local_tv_contribution.html.



under the state-aid rules.⁴³ The BBC also agreed to acquire content worth GBP 5 million per year from local television, until March 2017.⁴⁴

As of March 2016, 34 local television stations across the UK are licensed by Ofcom, including in Belfast, Birmingham, Brighton & Hove, Bristol, Cardiff, Edinburgh, Glasgow, Grimsby, Leeds, Liverpool, London, Manchester, Newcastle, Norwich, Nottingham, Oxford, Plymouth, Preston, Sheffield, Southampton, and Swansea.⁴⁵ The vast majority of these broadcasters did not exist before 2011.

2.1.1. Independent production exemptions

Moreover, under the United Kingdom's Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012,⁴⁶ the requirement⁴⁷ to commission 10% of output from independent production companies was removed for local broadcasters.⁴⁸ This order also permitted independent producers to hold up to 100% ownership of a local broadcaster, provided the provision of a local television service is not the main activity of the producer.⁴⁹ This was designed to let independent producers bid for local television licences without forfeiting their independent status.⁵⁰

2.1.2. Media-ownership rules

It is also worth noting that in 2011 the Media Ownership (Radio and Cross Media) Order was passed in the United Kingdom,⁵¹ designed to deregulate the rules on ownership of local newspapers, radio and television licences. The UK government argued that "one of the barriers preventing

⁴³ European Commission, State aid SA.33980 (2012/N) – United Kingdom: Local Television in the UK, 5 December 2012, http://ec.europa.eu/competition/state_aid/cases/244689/244689_1425664_116_2.pdf.

⁴⁴ BBC, "Acquisition of Local Content", 10 May 2012 (revised 14 February 2014), http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_local_content_acquisition_february2014.pdf.

⁴⁵ Ofcom, "Applying for an L-DTPS Licence", <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/apply/>. See also Ofcom, "Local TV broadcasters", <http://licensing.ofcom.org.uk/tv-broadcast-licences/current-licensees/local-tv/>.

⁴⁶ The Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012, <http://www.legislation.gov.uk/uksi/2012/1842/contents/made>.

⁴⁷ The Communication Act 2003, section 309(1), provides that "The regulatory regime for every digital television programme service that is not comprised in a licensed public service channel includes the conditions that OFCOM consider appropriate for securing that, in each year, not less than 10 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the service is allocated to the broadcasting of a range and diversity of independent productions", <http://www.legislation.gov.uk/ukpga/2003/21/section/309>.

⁴⁸ The Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012, Article 4, http://www.legislation.gov.uk/uksi/2012/1842/pdfs/uksi_20121842_en.pdf. Notably, the requirement under Article 17 of the AVMS Directive (2010/13/EU) to reserve 10% of transmission time to "European works created by producers who are independent of broadcasters" does not apply to broadcasts intended for "local audiences" (Article 18), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&from=EN>.

⁴⁹ The Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012, cit., Articles 5-8.

⁵⁰ Department for Culture, Media and Sport, "Policy Paper: 2010 to 2015 government policy: media and creative industries", 8 May 2015, <https://www.gov.uk/government/publications/2010-to-2015-government-policy-media-and-creative-industries/2010-to-2015-government-policy-media-and-creative-industries>.

⁵¹ The Media Ownership (Radio and Cross Media) Order 2011 (S.I. 2011/1503), <http://www.legislation.gov.uk/uksi/2011/1503/note/made>.



commercially sustainable local television to emerge in the UK is the restrictions around media ownership.” The result of the reformed media ownership rules was that local media companies were “free to affiliate to develop cost effective local television service models benefiting from syndication of resources, journalists and technical expertise.”⁵²

2.2. Flexibility and funding

2.2.1. Switzerland

While the developments mentioned above are an example of the creation of a regional audiovisual sector that had not previously existed, there have also been significant reforms in countries seeking to reform, rather than create, regional audiovisual media. In this regard, developments in Switzerland are quite relevant, with the implementation of a number of major reforms applying to existing regional audiovisual media. First, in January 2013, the Radio and Television Ordinance was amended, removing broadcasting restrictions on regional television broadcasters, and allowing them to broadcast programmes outside their allocated coverage areas.⁵³

Second, in September 2014, the Swiss parliament amended the Radio and Television Act, introducing a new broadcasting charge that households and businesses must pay regardless of whether they possess a reception device or not.⁵⁴ Importantly, between 4% and 6% of the new charge was to be allocated to local and regional broadcasters. In June 2015 the amendments were put to the Swiss people in a referendum, the outcome of which was the acceptance of the proposed amendments, thus adopting the amendment to the Radio and Television Act.⁵⁵ The new provisions came into force on 1 July 2016. Notably, regional broadcasters supported by the new fee are required to subtitle certain programmes, to ensure access for those with hearing difficulties. However, the costs incurred will be covered in full by the new fee.

The amending legislation also sought to simplify the licence-award procedure for local and regional broadcasters, with provisions that it would no longer be “compulsory to verify that the diversity of opinions and of the offering is not threatened in the coverage areas concerned. However, if several candidatures are equivalent, the licence will be awarded to the broadcaster which contributes the most to media diversity.”⁵⁶

Then, in November 2014, further legislative amendments were made to provide “more flexibility” for regional broadcasters in Switzerland.⁵⁷ First, the obligation on some local broadcasters

⁵² Department for Culture, Media and Sport, “The Media Ownership (Radio and Crossmedia) Order 2011: Impact Assessment”, p. 8, http://www.legislation.gov.uk/ukia/2011/539/pdfs/ukia_20110539_en.pdf.

⁵³ Federal Office of Communications, “Regional TV programme services can now be broadcast throughout Switzerland”, 23 January 2013, <https://www.bakom.admin.ch/bakom/fr/page-daccueil/medias-electroniques/politique-des-medias/actualites-et-contextes/les-programmes-tv-regionaux-peuvent-etre-diffusees-dans-toute-la.html>.

⁵⁴ Zeller F., “Parliament adopts universal broadcasting charge”, IRIS 2014-10/6, <http://merlin.obs.coe.int/iris/2014/10/article6.en.html>.

⁵⁵ Zeller F., “Close referendum result on universal broadcasting charge”, IRIS 2015-7/15, <http://merlin.obs.coe.int/iris/2015/7/article5.en.html>.

⁵⁶ Federal Office of Communications, “New RTVA: improvements in conditions for regional broadcasters”, <https://www.bakom.admin.ch/bakom/fr/page-daccueil/medias-electroniques/politique-des-medias/nouvelle-lrtv--ameliorations-des-conditions-pour-les-diffuseurs.html>.

⁵⁷ Federal Office of Communications, “More flexibility for the regional radio and TV stations”, 5 November 2014, <https://www.bakom.admin.ch/bakom/fr/page-daccueil/l-ofcom/informations-aux-medias/communiques-de-presse.msg-id-55099.html>.



to broadcast a window of programmes directed at the area they cover was abolished. Local broadcasters could now choose whether to do so. Second, a number of obligations were relaxed, including regarding the promotion of the Swiss cinema industry and the adaptation of broadcasts for the hard of hearing and the visually impaired. Following these amendments, in December 2015 the Swiss Federal Office of Communications published a study on regional television.⁵⁸ The purpose of the study was to propose options to ensure a “solid financial basis for, and a good public response to, regional television”.⁵⁹ The study made a number of recommendations for possible options, including two measures which “appear indispensable for the survival of the section”, namely: (a) channel numbering for linear services; and (b) findability of programme services for the non-linear services.⁶⁰

2.2.2. Spain

Furthermore, mirroring Switzerland, in 2012 the Spanish parliament amended⁶¹ the General Audiovisual Communication Law 7/2010,⁶² introducing a new legal framework for regional public service broadcasters, which allows regional public service broadcasters greater flexibility in the provision of their audiovisual media services. According to this amendment, the Autonomous Communities may opt for direct or indirect management of their public service broadcasters through various models, including public-private partnership. If an Autonomous Community chooses not to provide public service broadcasting, it may then call for tenders for the award of the available licenses to private service providers. Moreover, an Autonomous Community may transfer its public service broadcaster to a third party, in accordance with its specific legislation.⁶³

If an Autonomous Community opts for a model of indirect management, or any other instruments of public-private partnership for the provision of a public service audiovisual media service, then it may participate in the capital of the broadcaster providing this service.

The amendment allows arrangements between regional public service broadcasters for joint production or editing of content to improve the efficiency of their business. It also introduces obligations on regional public service broadcasters, such as a maximum limit of expenditure for the financial year in question, and the obligation to submit an annual report.

See also Aubry P., “More flexibility for regional radio and TV stations”, IRIS 2015-1/9, <http://merlin.obs.coe.int/iris/2015/1/article9.en.html>.

⁵⁸ Federal Office of Communications, “Regional TV: the challenges”, 8 December 2015, <https://www.bakom.admin.ch/bakom/fr/page-daccueil/l-ofcom/informations-aux-medias/communiqués-de-presse/msg-id-59830.html>.

⁵⁹ Wagner-Hatfield study, ‘Brief summary’, cit., p. 2.

⁶⁰ Wagner-Hatfield study, ‘Brief summary’, cit., p. 12.

⁶¹ Ley 6/2012, de 1 de agosto, de modificación de la Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual, para flexibilizar los modos de gestión de los servicios públicos de comunicación audiovisual autonómicos, http://noticias.juridicas.com/base_datos/Admin/l6-2012.html.

⁶² Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual, http://noticias.juridicas.com/base_datos/Admin/l7-2010.html.

⁶³ Cabrera Blázquez F.J., “Audiovisual Act Amended”, IRIS 2012-8/20, <http://merlin.obs.coe.int/iris/2012/8/article20.en.html>.



2.2.3. Germany

Finally, there have also been legislative developments in Germany, in particular at state level in terms of introducing flexibility and funding. For example, in July 2014, the Saxony parliament amended the Private Broadcasting Act with the aim of improving the business environment for local television.⁶⁴ Importantly, the amendments included allowing the regulator *Sächsische Landesmedienanstalt* (Saxony Media Council) to support the authorised operators of regional audiovisual media programmes in creating/facilitating the infrastructure necessary for the dissemination of its program. Following these amendments, in July 2015, the Saxony Media Council established a EUR 600,000 fund to assist regional audiovisual media with infrastructure development.⁶⁵

2.3. Consolidation and efficiency

2.3.1. The Netherlands

There are also instances of countries engaging in the structural reform of regional audiovisual media in order to reduce costs and increase efficiency. A recent example is that of the Netherlands, where it was proposed to reduce the public funding of regional broadcasters by 1 January 2017.⁶⁶ The reforms began in 2014, when the Media Act was amended, with the responsibility for the funding of regional broadcasters being transferred from the provincial authorities to central government.⁶⁷ Prior to this, when each province was obliged to fund at least one regional broadcaster, there were instances of provinces reducing funding to broadcasters and broadcasters initiating legal action over these reductions.⁶⁸

However, under the 2014 reforms, funding for regional broadcasters was administered by the media regulator, the *Commissariaat voor de Media*, with each of the 13 regional broadcasters required to apply for a licence every five years.⁶⁹ In September 2015, the Dutch government sent further proposals to parliament on reforming regional broadcasting, through the establishment of a new regional public broadcasting organisation, and a EUR 17 million reduction in government funding by 1 January 2017. This followed consultation between the government and the umbrella

⁶⁴ <http://www.slm-online.de/11007/sitzung-des-medienrates-der-slm-vom-16-07-2014>.

⁶⁵ Wagner-Hatfield study, 'Brief summary', cit., p. 5.

⁶⁶ Ministry of Education, Culture and Science, "Media Act: rules for broadcasters and programming", <https://www.government.nl/topics/the-media-and-broadcasting/contents/media-act-rules-for-broadcasters-and-programming>.

⁶⁷ Regulation of the State Secretary for Education, Culture and Science, 11 June 2014, no. WJZ/634652 (10487) containing rules on the content and presentation of the financial statements of the regional public media institutions and amend the Media Regulations 2008 (*Regeling van de Staatssecretaris van Onderwijs, Cultuur en Wetenschap van 11 juni 2014, nr. WJZ/634652 (10487), houdende regels voor de inhoud en inrichting van de jaarrekening van de regionale publieke media-instellingen en wijziging van de Mediaregeling 2008*), Article 9a, <https://zoek.officielebekendmakingen.nl/stcrt-2014-17844.html>. See 7.5 below.

⁶⁸ Oostveen M., "Decision on Lowering Funding for Regional Broadcasters Annulled", IRIS 2012-4/34, <http://merlin.obs.coe.int/iris/2012/4/article34.en.html>. See also, Oostveen M., "Decision of the Council of State on Budget Cuts for Dutch Regional Broadcaster", IRIS 2013-4/22, <http://merlin.obs.coe.int/iris/2013/4/article22.en.html>.

⁶⁹ Regulation of the State Secretary for Education, Culture and Science, 11 June 2014, no. WJZ/634652 (10487), cit, Article 9a.



organisation of the regional broadcasters (*Stichting Regionale Omroep Overleg en Samenwerking*) (ROOS).⁷⁰

In March 2016 the proposed amendments to the Media Act were adopted.⁷¹ First, a new organisation will be established, called the *Regionale Publieke Omroep* (Regional Public Broadcasters - RPO), which will collectively represent the regional broadcasters. For ten years the RPO will be granted an exclusive “concession” (*concessie*) by the Minister for Education, Culture and Science for the realisation of public broadcasting on a regional level, and will act as a single unified organisation responsible for public broadcasting at a regional level.

In order to obtain this concession the RPO needs to submit a “concession policy plan” to the Minister, and resubmit again after five years. The plan must contain a detailed report on the ways in which the RPO wishes to shape public broadcasting on a regional level in the upcoming years. The plan needs to cover quantitative and qualitative goals. It must specify the content of regional programmes in general terms, the intended audience of programmes, and the resources the RPO needs to achieve these goals. It must also specify some organisational requirements, such as the nature and number of channels that is required and the frequencies needed to achieve this.⁷² This means that the broadcasters will no longer have to submit individual plans to the Media Authority. Based on this plan, the Minister and the RPO come to a “performance agreement” which contains the quantitative and qualitative goals the RPO should achieve, and the possible sanctions to be imposed should these goals not be achieved. It is explicitly mentioned that the performance agreement does not relate to the content of specific regional programming: the performance agreement is directed at the programming in general.

Overall, the reforms are designed so that only one organisation is required to apply for an agreement, so the individual regional audiovisual media providers are no longer required to submit individual applications, as before. The reforms have been described by the European Association of Regional Television as a “milestone.”⁷³

2.3.2. Portugal

In a somewhat similar manner to the Netherlands, Portugal has also implemented some recent structural changes to regional audiovisual media. This includes, in 2015, abolishing the Office for Media (*Gabinete para os Meios de Comunicação Social* - GMCS). This body was in charge of advising the Government on the design, implementation and evaluation of public policies for the media, and of ensuring the allocation and supervision of state incentives for the sector. However, both Law Decrees nos. 22/2015 and 23/2015⁷⁴ provide that managing incentives and support for local and regional media should be transferred to the Commissions of Regional Coordination and

⁷⁰ ROOS, <https://www.rijksoverheid.nl/onderwerpen/media-en-publieke-omroep/nieuws/2015/09/07/efficientere-regionale-omroep-blijft-herkenbaar-in-de-regio>.

⁷¹ Law of 16 March 2016 amending the Media Act 2008 in relation to the future-proofing of the public media service, https://www.eerstekamer.nl/behandeling/20160330/publicatie_wet_3/document3/f=vk2sf5wyjkz8.pdf.

⁷² Selier B., “Amendments to Media Act concerning regional broadcasting”, IRIS 2016-5, <http://merlin.obs.coe.int/iris/2016/5/article25.fr.html>.

⁷³ European Association of Regional Television, “The Netherlands: New Milestone Reached in Regional PBS Reform”, 15 March 2016, <http://www.circom-regional.eu/media-news-hidmn/905-the-netherlands-new-milestone-reached-in-regional-pbs-reform>.

⁷⁴ Decreto-Lei n.º 24/2015, and Decreto-Lei n.º 25/2015, <https://dre.pt/application/file/66432648>.



Development (regional bodies). The reforms were “based on the idea that a more rigorous evaluation will result from the proximity between the decision-makers and beneficiaries.”⁷⁵

2.4. Advertising and regional windows

2.4.1. Germany

An issue of particular importance for regional audiovisual media is that of advertising, and in particular national broadcasters advertising on a regional basis. This issue has been particularly acute in jurisdictions such as Germany, where in December 2014, the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) held that it was not a breach of broadcasting law for advertising spots to be transmitted on a regional basis on a national television channel.⁷⁶ The ruling followed an announcement by the “ProSieben” television channel that it intended to offer regional advertising spots to advertising customers for whom national TV advertising was unattractive. The lower-instance *Verwaltungsgericht Berlin* (Berlin Administrative Court - VG Berlin), in a decision of 26 September 2013,⁷⁷ ruled that it was not entitled to do so. It considered advertising to be part of the programme, which meant that the holder of a licence to broadcast a national programme was only allowed to transmit advertising on a country-wide basis.

However, the BVerwG held that “editorial content was covered by the broadcasting licence, not advertising. As such, the broadcaster was free to decide whether and how to broadcast advertising, as long as it adhered to advertising regulations.”⁷⁸ Notably, “the BVerwG also examined the objectives of the *Rundfunkstaatsvertrag* (RStV), and noted that the suggestion that such provisions could be a sensible way of protecting the financial future of local or regional media did not appear in the RStV.”⁷⁹

A second issue which has been brought before the courts has been that of regional windows, and again, the example of Germany is useful. Under section 25(4) of the RStV, the two commercial TV stations with the widest national reach are obliged to broadcast regional window programmes. The purpose of this provision is to prevent the development of an overly dominant influence on public opinion and to ensure diversity. One of the broadcasters subject to this rule, Sat.1, made a complaint over its obligation to broadcast a Hessian regional programme operated by the external provider TV Illa GmbH. The regional window broadcast by Sat.1 is the programme “17:30 Sat.1”, the five editions of which are produced by different companies. TV Illa has produced the Hessian regional programme since 2004. Sat.1 initiated legal proceedings concerning the constitutionality of the relevant rule of the RStV, stating that it was questionable whether the rule was compatible with the principle of freedom of broadcasting, enshrined in Article 5(1) of the *Grundgesetz* (Basic

⁷⁵ Lameiras M. & Sousa H., “Presidency of the Council of Ministers will advise the Government on media issues”, IRIS 2015-6/31, <http://merlin.obs.coe.int/iris/2015/6/article31.en.html>.

⁷⁶ Ruling of the Federal Administrative Court of 17 December 2014 (case no. 6 C 32.13), <http://www.bverwg.de/entscheidungen/entscheidung.php?ent=171214U6C32.13.0>. See Matzneller P., ‘Federal Administrative Court permits regional advertising by national TV broadcaster’, IRIS 2015-3/8, <http://merlin.obs.coe.int/iris/2015/3/article8.en.html>.

⁷⁷ Case no. 27 K 231.12.

⁷⁸ Matzneller P., “Federal Administrative Court permits regional advertising by national TV broadcaster”, *op. cit.*

⁷⁹ *Ibid.*



Law⁸⁰).⁸¹ The *Verwaltungsgericht Kassel* (Kassel Administrative Court) rejected the application in a judgment of 1 December 2015.⁸² However, the Court did allow an appeal to the *Hessisches Verwaltungsgerichtshof* (Hessian Administrative Court), owing to its fundamental importance, and it is yet to be seen whether the issue will be decided definitely by the higher courts in Germany.

2.4.2. Russian Federation

Finally, there have been important developments in the Russian Federation recently, concerning the impact of advertising bans on regional media.⁸³ In July 2014 President Putin signed into law several federal statutes that amended certain important regulations of television advertising, including the Federal Statute “On amendments to Article 14 of the Federal Statute On Advertising” (Федеральный закон О внесении изменений в статью 14 Федерального закона "О рекламе").⁸⁴ The statute prohibits commercials on encoded and/or pay-TV channels if these channels do not hold a terrestrial broadcasting licence or are not on the list of must-carry programmes. The ban was set to enter into force on 1 January 2015. Notably, the OSCE Representative on Freedom of the Media expressed her concern about the new legislation, including that amendments would “negatively affect media plurality with the coming digital switchover, when hundreds of regional broadcasters will lose their terrestrial licences and, under the amendment, there will be no economic rationale to broadcast in cable systems or even online.”⁸⁵

However, in February 2015, the president signed into law a bill adopted by the State Duma on 27 January 2015,⁸⁶ which lifted the ban on commercials for pay cable and satellite television channels that do not broadcast (or rebroadcast) foreign content.⁸⁷ From then on, pay-TV channels are again able to run commercials, but only if their share of foreign shows, films and other programming does not exceed 25 per cent of total content. Compliance with these regulations will be monitored by the Federal Antimonopoly Service (FAS) that traditionally oversees compliance with the advertising law.⁸⁸

⁸⁰ The Basic Law for the Federal Republic of Germany (Grundgesetz) is the German constitution, and is superior to all other sources of domestic law,

https://e-justice.europa.eu/content_member_state_law-6-de-en.do?member=1.

⁸¹ Beckendorf I., “Obligation for commercial TV stations to broadcast a regional programme”, IRIS 2016-3/7, <http://merlin.obs.coe.int/iris/2016/3/article7.en.html>.

⁸² Case 1 K 618/13.KS, 2 December 2015,

https://vg-kassel-justiz.hessen.de/irj/VG_Kassel_Internet?rid=HMdJ_15/VG_Kassel_Internet/sub/d3a/d3a1d4f4-fba3-1517-9cda-a2b417c0cf46,,,11111111-2222-3333-4444-100000005003%26overview=true.htm.

⁸³ See generally, Susanne Nikoltchev (ed.), *IRIS Special: The Regulatory Framework for Audiovisual Media Service in Russia* (Strasbourg, European Audiovisual Observatory, 2010).

⁸⁴ Andrei Richter, “Advertising law changes to affect pay TV”, IRIS 2014-8/34, <http://merlin.obs.coe.int/iris/2014/8/article34.en.html>.

⁸⁵ Organization for Security and Co-operation in Europe, “Law amendments on advertising in Russia further endanger media pluralism and free flow of information, says OSCE representative”, 7 July 2014, <http://www.osce.org/fom/120942>.

⁸⁶ Федеральный закон от 3 февраля 2015 г. N 5-ФЗ “О внесении изменения в статью 14 Федерального закона “О рекламе” (Federal law of 3 February 2015 N 5-ФЗ “On amending Article 14 of the Federal law “On advertising”), <http://www.garant.ru/hotlaw/federal/605272/>. See Organization for Security and Co-operation in Europe, “Mijatović welcomes eased restrictions for commercial television channels in Russia, but reiterates call for complete lifting of ban”, 28 January 2015, <http://www.osce.org/fom/137226>.

⁸⁷ Andrei Richter, “Advertising Ban Amended to Excerpt Russian Entities”, IRIS 2015-3/27, <http://merlin.obs.coe.int/iris/2015/3/article27.en.html>.

⁸⁸ Andrei Richter, “Advertising Ban Amended to Excerpt Russian Entities”, IRIS 2015-3/27, <http://merlin.obs.coe.int/iris/2015/3/article27.en.html>.



2.5. Must carry and the digital switchover

2.5.1. Romania

The issue of must-carry is central to regional audiovisual media policy in many countries, such as Romania. Notably, in July 2015, the National Audiovisual Council adopted CNA decision no. 350/2015, which sought to clarify the procedure for implementing the must-carry system in the case of the retransmission of programme services at regional and local level, pursuant to Article 82 (2) of the Audiovisual Act.⁸⁹ According to the Audiovisual Act, distributors retransmitting programme services at regional and local level are required to include in their offer at least two regional and two local, relative to where they exist, programmes. They will be selected on the basis of descending audience order. A new article, Article 13.1, was introduced with a view to be included in the regional/local offer; the interested broadcasters have to send to the programme services distributors a written request for retransmission under the must-carry principle of the TV service.

This followed a discussion in 2014, in which a recommendation of the *Consiliul Concurenței* (Competition Council) to the CNA suggested modifications to the must-carry legislation.⁹⁰

With the digital switchover in Romania,⁹¹ it is also worth noting the recent successful award of digital multiplexes in the area of regional audiovisual media. First, in February 2015, the *Autoritatea Națională pentru Administrare și Reglementare în Comunicații* (National Authority for Management and Regulation in Communications - ANCOM), the telecom authority in Romania, successfully completed an auction of regional digital television multiplexes.⁹² A regional multiplex will provide the whole county with digital terrestrial television services, whereas a local multiplex will serve specific assignment areas. All multiplexes will be awarded for a 10-year period.

Nine regional DTT multiplexes were awarded, including Regal, which was awarded 1 regional multiplex (Râmnicu Vâlcea), Cargo Sped, which was awarded 1 regional multiplex (Sibiu), 2K Telecom, which was awarded 5 regional multiplexes (four in Bucharest and one in Ploiești), Radio M Plus, which obtained 1 regional multiplex (Iași) and Digital Video Broadcast, which won 1 regional multiplex (Satu Mare).⁹³ All licences are granted for the period 17 June 2015 to 17 June 2025. The winners of the regional multiplexes will be able to start the provision of commercial television broadcasting services after 17 June 2015, and by 1 May 2017, they will have to begin operation of at least one transmitter in each assignment area. A total of two national, 40 regional and 19 local multiplexes were auctioned through this competitive selection procedure.⁹⁴

In July 2015, five new regional and local multiplexes in Suceava, Botosani, Bacau, Buzau and Piatra Neamt (the northern and eastern parts of Romania) were awarded in the third auction held by ANCOM for Digital Terrestrial Television (DTT) multiplexes. Following the initial bids, the company

⁸⁹ Eugen Cojocariu, "Modification of the conditions for issuing and amending the retransmission notification", IRIS 2015-8/29, <http://merlin.obs.coe.int/iris/2015/8/article29.en.html>.

⁹⁰ Eugen Cojocariu, "New 'Must-Carry' List for 2014", IRIS 2014-3/39, <http://merlin.obs.coe.int/iris/2014/3/article39.en.html>.

⁹¹ ANCOM, "Digital switch-over in Romania", March 2015, http://www.ancom.org.ro/en/martie-2015-tranzitia-la-televiziunea-digitala-terestra-n-romnia_5372.

⁹² Cojocariu E., "Regional digital multiplexes granted", IRIS 2015-5/33, <http://merlin.obs.coe.int/iris/2015/5/article33.en.html>.

⁹³ ANCOM, "The Third Auction for Digital Terrestrial Television Multiplexes, Completed", 27 July 2015, http://www.ancom.org.ro/en/the-third-auction-for-digital-terrestrial-television-multiplexes-completed_5400.

⁹⁴ Cojocariu E., "Regional digital multiplexes granted", cit.



Info Total Press S.A. acquired three multiplexes (two regional ones in Suceava and Botosani and a local one in Bacau), for which it will pay EUR 18,200, representing the total licence fee. TV Sat 2002 won one regional multiplex in Buzau, for which it will pay EUR 8,000. The multiplex in Piatra Neamt was awarded to Grup Est Security S.R.L., following a record number of 42 primary rounds, which took place between 18 and 26 May 2015, and the licence fee to be paid amounts to EUR 41,600.⁹⁵

2.5.2. Russian Federation

In contrast, the Russian Federation⁹⁶ passed an Ordinance in August 2015,⁹⁷ extending the complete digital terrestrial broadcasting switchover until 2018.⁹⁸ Notably, this followed a 2013 Decree, which “effectively chang[ed] the composition of the country’s first DTT multiplex.”⁹⁹ This multiplex will now no longer carry a regional channel and will be entirely federal, with the 10th slot allocated to the TV company “TV Tsentr” (TV Center). The regional TV channel that was originally to be created, as part of the first multiplex by the state-run communications company Russian Television and Radio Broadcasting Network (RTRS), is now to be replaced by regional multiplexes in the provinces. The decree tasked the main state broadcaster VGTRK with establishing regional channels on the basis of its provincial bureaux with the possible input of bona fide regional companies. RTRS will provide dissemination of the signal of the regional multiplexes. By the same decree the president also tasked the government with the licensing of such regional multiplexes.¹⁰⁰

2.5.3. France

In a way similar to the legal proceedings in Germany concerning regional windows, there have also been legal proceedings in France concerning must-carry obligations. Notably, in March 2016, the Constitutional Council issued a ruling on the constitutionality of the second paragraph of Article 34(2) of the Act of 30 September 1986,¹⁰¹ which requires cable operators and Internet access providers (IAPs) using the landline network to carry local public television services (local programmes on general channels, cable channels showing local news, and local channels) for their

⁹⁵ Cojocariu E., “New digital terrestrial television multiplexes granted”, IRIS 2015-7/28, <http://merlin.obs.coe.int/iris/2015/7/article28.en.html>.

⁹⁶ See generally, Vorontsova A. and Leontyeva X., “Focus on the Audiovisual Industry in the Russian Federation”, European Audiovisual Observatory, Strasbourg, 2016, <http://www.obs.coe.int/documents/205595/552774/RU+Focus+audiovisual+industry+2015+EN.pdf/03151b29-c010-4456-b967-1e3e267072df>.

⁹⁷ О внесении изменений в постановление Правительства Российской Федерации от 3 декабря 2009 г. № 985 (Ordinance of the Government of the Russian Federation of 29 August 2015, No. 911, “On amending Ordinance of the Government of the Russian Federation of 3 December 2009, No. 985”).

⁹⁸ Richter A., “Government extends plan for digital switch-over”, IRIS 2015-9/23, <http://merlin.obs.coe.int/iris/2015/9/article23.en.html>.

⁹⁹ Richter A., “Decree on Must-Carry Channels Amended Again”, IRIS 2013-6/31, <http://merlin.obs.coe.int/iris/2013/6/article31.en.html>.

¹⁰⁰ Richter A., “Decree on Must-Carry Channels Amended Again”, cit.

¹⁰¹ Conseil constitutionnel, Décision QPC n° 2015-529, 23 mars 2016, Sociétés Iliad et a (Constitutional Council, QPC decision no. 2015-529, 23 March 2016, the company Iliad and others), <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2015-529-qpc/decision-n-2015-529-qpc-du-23-mars-2016.147152.html>.



subscribers.¹⁰² Cable operators and IAPs are also required to bear the cost of transport and distribution from the place of editing, inherent in this obligation.

Two companies, Iliad and Free, had been required by the audiovisual regulator (*Conseil Supérieur de l'Audiovisuel* - CSA) to bear the cost of carrying and broadcasting programmes from a local broadcaster in the municipality of Nice, Azur TV. The companies requested a ruling on the constitutionality of Article 34(2), arguing that by requiring them to carry the programmes without making arrangements or laying down a framework for the obligation, particularly with regard to determining the conditions for sharing the corresponding cost, the contested provisions of Article 34(2) infringed upon their freedom to conduct business and the freedom to enter into a contract.

The Constitutional Council stated that, in adopting the contested second paragraph of Article 34(2), the legislator's aim had been to ensure that the development of these local public services would be maintained and promoted. These provisions should therefore be understood as imposing upon the distributors of audiovisual services an obligation to make the services available, free of charge, which only applied in respect to subscribers located in the geographical area of the local authority editing the service. The obligation was, moreover, limited to the transport and broadcasting of the services' programmes, without any requirement to carry out connection or civil engineering work. The legislator also explicitly intended to exclude the responsibility to bear the cost of digitising programmes from the scope of the obligation. The Constitutional Council concluded that, to a limited degree, the disputed provisions infringed upon the distributors' freedom to conduct business and to enter into a contract. It also found that the obligation thus instituted pursued an objective of general interest, and did not cause an unequal discharge of public burdens. The complaints claiming disregard of this principle, and those claiming infringement of the right of ownership, were set aside. The second paragraph of Article L. 34-2 of the Act of 30 September 1986 was found to comply with the Constitution.¹⁰³

2.5.4. The Netherlands: must-carry exemptions

Finally, in the area of new media and must-carry, it is interesting to note that the Dutch Media Authority (*Commissariaat voor de Media*) recently exempted a new television service in the Netherlands from being required to carry regional broadcaster channels. The telecommunications company KPN developed a new service in the form of a mobile application (KPN Play), which includes a package of 18 linear television channels, offering catch-up and on-demand content. Under the Media Act, KPN was subject to the must-carry rules, including those which provide that packages should include two channels from regional and local public service broadcasters. However, under the Media Act the authority was able to grant an exemption from the must-carry rules, and in this instance granted an exemption to KPN until 1 January 2017. Part of the Authority's reasoning was that adherence to the must-carry rules would "result in sizable extra costs for KPN," and as such the Play app "would no longer be commercially viable."¹⁰⁴

¹⁰² Blocman A., "Obligation to carry local public television services judged compliant with Constitution", IRIS 2016-5/11, <http://merlin.obs.coe.int/iris/2016/5/article11.en.html>.

¹⁰³ Blocman A., "Obligation to carry local public television services judged compliant with Constitution", cit.

¹⁰⁴ Eskens S.J., "Dutch telecom company granted exemption from must-carry rules for new app", IRIS 2016-1/26, <http://merlin.obs.coe.int/iris/2016/1/article26.en.html>.



2.6. Italy: frequency allocation

As stated by the European Association of Regional Television, sufficient frequency allocation for regional audiovisual media is an issue of “great importance.”¹⁰⁵ In this regard, it is notable that in June 2015 the Italian communications regulator Agcom reviewed the national frequency allocation plan for local television, ensuring that providers of media services at a local level benefit from the right to be conveyed.¹⁰⁶ Pursuant to Article 6, paragraph 8, of the Act 21 February 2014, n. 9, as amended by Article 1, paragraph 147, of the Act of 23 December 2014, n. 190 (Stability Law 2015), the decision of the Italian regulatory authority makes the transmission capacity of the new networks available to local media service providers, which will be selected by the Ministry for Economic Development on the basis of regional lists.

2.7. Closures

Finally, there have unfortunately been a number of closures in the regional audiovisual media sector, of both commercial and public broadcasters. A number of notable closures include: in Sweden, the commercial broadcaster TV4 closed all 25 local and regional stations in 2014. This was seen as “a major shift in the strategies of the private broadcaster who have had regional service for over 20 years.”¹⁰⁷ Notably, advertisement will still be local but there will be no local or regional programming.¹⁰⁸ In Spain, the regional government of Valencia also closed its public television and radio service RTVV (Radio Television Valenciana).¹⁰⁹ Additionally, in Bulgaria at the end of 2013, with the introduction of digitisation, Bulgarian National Television closed four of its regional programmes “due to the lack of any private investor’s interest to develop a regional multiplex broadcasting these programmes.”¹¹⁰ They were replaced by the national programme BNT2, uniting the production of these regional centres.

2.8. Conclusion

The foregoing overview is in no way exhaustive, but seeks to offer some insights into the regulatory and policy developments concerning regional audiovisual media currently being adopted in some European countries. One of the main insights that might be gleaned is that governments and regulators throughout Europe are quite responsive to the difficulties facing regional audiovisual

¹⁰⁵ European Association of Regional Television, *The importance of regional public service media: A strategic view of the role of regional public media in Europe*, November 2014, p. 11, <http://www.circom-regional.eu/doc-download/cr-docs/1406-circom-regional-position-paper/file>.

¹⁰⁶ Di Giorgi F., “AGCOM reviews the national frequency allocation plan for local television”, IRIS 2015-8/21, <http://merlin.obs.coe.int/iris/2015/8/article21.en.html>

¹⁰⁷ European Association of Regional Television, “Swedish commercial television closing all regional stations” 15 April 2014, <http://www.circom-regional.eu/news1-2/698-swedish-commercial-television-closing-all-regional-stations>.

¹⁰⁸ European Association of Regional Television, “Swedish commercial television closing all regional stations” cit.

¹⁰⁹ European Association of Regional Television, “Public TV and radio service RTVV shut down”, 2 December 2013, <http://www.circom-regional.eu/news1-2/654-public-tv-and-radio-service-rtvv-shut-down>.

¹¹⁰ Nikolova R., “On-budget subsidies for public media”, IRIS 2016-3/6, <http://merlin.obs.coe.int/iris/2016/3/article6.en.html>.



media, and the extent and breadth of regulatory activity is quite evident. Notably, a number of themes can be identified.

First, increased flexibility for regional audiovisual media in terms of regulatory burden seems to be evident in a number of countries, including the UK, Switzerland and Spain. Second, in light of the importance of funding to a sector with significant costs; the allocation of funding for infrastructure through new arrangements, such as in the case of the Saxony Media Council, and the introduction of funding from a new broadcasting charge in Switzerland. Finally, structural reform in the organisation of regional audiovisual media, which is occurring in countries such as the Netherlands and Portugal.



3. Regional and local pluralism: the Media Pluralism Monitor tool and the results of the 2015 implementation

Elda Brogi and Alina Ostling, EUI

3.1. Introducing the Media Pluralism Monitor (MPM)

Pluralism and freedom of the media are essential preconditions for the democratic foundations of the European Union (EU) and the legitimacy of the union itself. While the Treaties do not provide the EU with explicit competence for freedom of expression or the freedom and pluralism of the media, these elements are at the core of the EU's structure, since they are enshrined in the EU Charter of Fundamental Rights and belong to the member states' constitutional traditions.¹¹¹

Past and recent events¹¹² show that an EU-Level shared policy on freedom of the media and pluralism may be necessary to guarantee a common and consistent approach across member states. Nonetheless, the consideration of different society and market dynamics, the fact that media pluralism is a national competence, and the diverse legal and socio-political (including regional) characteristics of the European countries, bring complexity to freedom and pluralism media analysis. Furthermore, these factors limit both the development of a common EU internal policy and the regulation of media freedom and pluralism. The Media Pluralism Monitor (MPM) project must be interpreted within this context; as a tool with which to collect information and raise awareness of the health of media pluralism in the EU member states.

The MPM project, co-financed by the EU and carried out by the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute, aims to assess the risks to media pluralism and media freedom in any given EU country (and beyond), accounting for the different components that constitute the complex definition of "media pluralism".¹¹³ The current MPM tool

¹¹¹ CMPF, European Union competencies in respect of media pluralism and media freedom, EUI RSCAS PP; 2013/01, <http://cmpf.eui.eu/Documents/CMPFPolicyReport2013.pdf>.

¹¹² See, for all, the recent debate on the new media law in Poland, Klimkiewicz B., "Poland: The Public, The Government And The Media", 8 February 2016, LSE Media Policy Project, <http://blogs.lse.ac.uk/mediapolicyproject/2016/02/08/poland-the-public-the-government-and-the-media/>. See also: http://ec.europa.eu/news/2016/01/20160113_en.htm.

¹¹³ On the MPM, see <http://monitor.cmpf.eui.eu/>.



focuses on the role of the media in providing news and current affairs, and gauges the risks for media pluralism according to a set of indicators, including legal, economic and socio-political dimensions in four key risk domains: “Basic Protection”, “Market Plurality”, “Political Independence” and “Social Inclusiveness”.

The MPM methodology follows the holistic approach developed by the Independent Study on the “Indicators for Media Pluralism in the Member States-Towards a Risk-Based Approach”,¹¹⁴ while streamlining some of the features of the tool proposed by the Study. Over a number of years, the CMPF has improved the research design of the tool by better balancing different types of questions to assess risks for media pluralism (legal, economic and socio-political); by developing a streamlined formula for calculating risks; and by restructuring the Monitor’s areas and indicators with an aim to increase the coherence and reliability of the instrument.

A first pilot version of the MPM was developed and implemented by the CMPF in 2013-14 (MPM2014) and applied to a sample of 9 EU countries.¹¹⁵ A second pilot project was carried out in 2015 (MPM2015)¹¹⁶ in the remaining 19 EU countries.¹¹⁷ The indicators of the MPM2014 and MPM2015 versions of the tool on regional and local media are similar. However, MPM2015 is a more recent and fine-tuned version after the pilot-test of 2014, as well as being more representative of the variety of EU countries. Therefore, for the purpose of this publication we focus now only on MPM2015.

Just to give some hints on the MPM2014 results, Greece and Hungary scored the highest risk for what in MPM2014 was the risk area ‘geographical pluralism’¹¹⁸. Within this area, the MPM2014 analysed the safeguards for and existence of local and regional media, and the representation of local and regional communities in the media.¹¹⁹ In this analysis, Greece and Hungary were both found to be at high risk, but for different reasons: in 2014 Greece could not rely on regulatory safeguards and strong public service media after the shutdown of ERT and the creation of NERIT,¹²⁰ and this was detrimental for regional, local pluralism.¹²¹ In Hungary, the media law reform of 2010 produced a “trend toward greater concentration in local media markets and the establishment of media enterprises owned by the local government that are engaged in multiple market segment activities” and a highly centralised PSM.¹²²

Among the other analysed countries, it is worth noting that the indicators on regulatory safeguards for regional and local media received a rating of medium risk in Italy. Italy has an

¹¹⁴ See http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf.

¹¹⁵ The sample 9 EU countries consisted of Belgium, Bulgaria, Denmark, Estonia, France, Greece, Hungary, Italy and the UK. Results are available at: <http://monitor.cmpf.eu.eu/results-2014/>.

¹¹⁶ <http://monitor.cmpf.eu.eu/mpm2015/results/#download>.

¹¹⁷ The 19 EU countries included: Austria, Croatia, Cyprus, Czech Republic, Finland, Germany, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.

¹¹⁸ For the 2014 results on the geographical pluralism domain, see <http://monitor.cmpf.eu.eu/results-2014/geographical/>.

Other indicators that may be relevant to assess local and regional media pluralism according to the specificities of the given country are those related to access to media by minorities and safeguards for community media. In the MPM2014 these were assessed under the “Cultural Pluralism” domain: <http://monitor.cmpf.eu.eu/results-2014/cultural/>.

¹¹⁹ The indicators used in 2014 were split into legal, economic, and socio-political. Within the geographical domain, regional and local pluralism were assessed analysing the regulatory safeguards and policies for regional and local media (indicator 9), the regulatory safeguards for locally oriented and locally produced content on PSM channels and services (indicator 10), the Centralisation of the national media system (indicator 26). Within the general geographical domain, the risk for pluralism was also assessed taking into account guaranteed levels of universal coverage of PSM and broadband networks, and the availability and quality of broadband.

¹²⁰ Iosifidis, P. and Katsirea, I., Public service broadcasting in Greece in the era of austerity, EUI RSCAS; 2014/42.

¹²¹ CMPF MPM2014 report, p. 98. <http://cmpf.eu.eu/Documents/MPM2014-PolicyReport.pdf>.

¹²² CMPF MPM2014 report, p. 105, <http://cmpf.eu.eu/Documents/MPM2014-PolicyReport.pdf>.



established tradition of local media (the indicator ‘Centralisation of the National Media System’ received a rating of low risk) and PSM provides regional information, but in recent years policies on the development of local and regional media have become more oriented to safeguarding national media.¹²³

3.2. The MPM2015 approach to regional and local media

The “Social Inclusiveness” risk area of the MPM2015 focuses on indicators that entail pluralism in “cultural”, “geographical” and “media types and genres”,¹²⁴ and assesses the state of play of regional and local pluralism in a given country. As in MPM2014, MPM2015 included three relevant indicators: ‘Access to media of different social and cultural groups, and local communities’; ‘Availability of media platforms for community media’; and ‘Centralisation of the media system’. These indicators assessed the regional and local perspectives, while covering related aspects, such as minority representation, which is often linked to geographical aspects.

By using a holistic approach, the MPM indicators try to capture perspectives on both the internal and external pluralism. The internal pluralism is assessed mainly by examining the PSM’s performance in relation to the obligations to guarantee diverse programming and access to airtime for local/regional communities. The external pluralism assesses the probability that a threat to the diversity of a media system may arise from a high, and growing, centralisation of the media on a national scale. In particular, the Monitor assesses the safeguards for regional and local media, and the availability of media platforms for community media.

It is also important to stress that the local and regional perspective are adopted as a cross-cutting element across the MPM tool. Indicators in the other three risk areas use a country-specific approach that considers the local, regional or federal structure of a given country in order to account for the differences in the legal and institutional set-up, and the variety of political landscapes, e.g. by the indicator of the independence of authorities that regulate the media sector.

3.3. The MPM2015 analysis on regional and local media

3.3.1. Legal safeguards and support measures for regional and local media

The MPM2015 assessed external regional and local pluralism with the indicator of the “Centralisation of the media system”. This indicator analysed the legal safeguards in place for regional and local media, and whether the state supports regional/local media through subsidies, or through other policy measures. The indicator also proposed a ‘decentralisation test’ to assess the share of newspapers published regionally, and the percentages of the audience shares of regional/local radio and TV.¹²⁵ Specifically, the indicator examined whether the law: (i) recognises regional and local media as being specific categories of media that have special objectives and

¹²³ CMPF MPM2014 report, p. 112ss, <http://cmpf.eui.eu/Documents/MPM2014-PolicyReport.pdf>.

¹²⁴ See also the Independent Study, cit. Chapter 1, footnote 4.

¹²⁵ The decentralisation test was found to be problematic, as relevant data were not always available.



obligations; and, (ii) whether the regulatory framework reserves frequencies for regional and local radio or for audiovisual media services.

Most of the countries examined (12 of 19) had legal safeguards, providing both legal recognition of regional and local media and frequency reservation. Only three countries (Czech Republic, Finland and Romania) had none of these legal safeguards. The MPM2015 results relating to the effectiveness of the legislation in safeguarding regional and local media were less encouraging. The legislation is effective in only six of the countries (Cyprus, Luxembourg, Malta, Romania, Spain and Sweden), while in the remaining 13 countries it is not fully or at all effective.

The legal recognition of regional and local media takes different forms across Europe, according to the institutional and geographical specificities of the countries. In Germany, for instance, there is a constitutional mission for the legislator to increase regional and local diversity so as to meet the requirements of Article 5 of the Basic Law.¹²⁶ For broadcasting, the German legislator has addressed this by establishing several laws in the Interstate Broadcasting Agreement.¹²⁷ In contrast, in a small country like Luxembourg, the legal provisions are limited to the law of 1991 on electronic media,¹²⁸ which only recognises the existence of a "local radio service," without specifying that it has special mission and obligations.

There are also considerable differences in terms of frequency reservation across EU19. In Austria, the overwhelming majority of the frequencies are reserved for regional radio channels, which means that the number of national channels is very limited. At the same time, in Romania there is no specific number of frequencies allocated to regional and local media, but the broadcasting distributors are obliged to retransmit the programmes of the local and regional TV stations (at least two regional and two local programmes) that fall under the 'must carry' rule.

The MPM results show that, even if the legal basis is in place, the legislation is not always effective in safeguarding regional and local media. Croatia reports that regional and local media are generally prone to greater risks, since they have fewer and fewer advertisers. Moreover, local radio stations are concentrated in the hands of only a few owners. In the Czech Republic, only the PSMS (Czech Television, Czech Radio and the Czech News Agency) are required to provide regional services. Furthermore, there is no monitoring or sanctioning system specifically designated to guarantee pluralism for local or regional media.

The MPM also examined whether state support for regional and local media was through subsidies or policy measures. The results showed that only three countries (Germany, Spain, and Sweden) exhibit a wide variety of measures. For example, Germany supports the press through reduced VAT rates, and does not permit public broadcasters to offer full-coverage local reporting, in order to limit competition with local media. In the majority of the countries examined (16 of 19) the state supports regional/local media only through a limited number of policy measures or subsidies. An interesting case is Finland; the Finnish legislation has no provisions to support or protect local

¹²⁶ The Basic Law is the constitutional law of the Federal Republic of Germany (German: Grundgesetz für die Bundesrepublik Deutschland). The exact reference to Article 5 can be found here: BVerfG, Entscheidung vom 31.07.2007 - 1 BvR 946/07.

¹²⁷ The relevant legal provisions in the Interstate Broadcasting Agreement (German: Rundfunkstaatsvertrag) include the following: (i) Section 11, Sub-Section 1, Sentence 2 commits PSMS to including regional diversity in their programmes; and (ii) in Section 25, Subsection 4, there are obligations for private broadcasters to include regional programmes in their schedules for an up-to-date and authentic account of events in the political, economic, social and cultural life in a particular area.

¹²⁸ Article 17 (1) specifies that a local radio service may only be granted to a non-profit association and article 17 (6 a) adds that its specification (cahier des charges) may contain provisions on "the promotion of local life, local culture and artistic creativity in the design and implementation of radio service. "And " the respect for pluralism in the presentation of local news and ideas "(Article 17 (6.g)). Source: Loi du 27 juillet 1991 sur les médias électroniques. <http://www.legilux.public.lu/leg/a/archives/2001/0088/2001A17881.html>.



media, and this has resulted in limited subsidies thereof. Moreover, in practice regional television channels do not exist, and the audience for regional radio channels is limited.

In addition to evaluating the situation relating to regional and local media in general, the MPM2015 also examined the legal safeguards in place for community media.¹²⁹ Community media was considered to be relevant in evaluating regional and local pluralism, because the term 'community media' is occasionally used as synonymous with the term 'regional and local media'. For example, the Dutch Media Act does not use the term 'community media', but only distinguishes between (national/regional/local) public media, commercial media, commercial on-demand media services, and radio broadcasts for special events (with limited reach and scope). Moreover, local public service media in the Netherlands share several characteristics with community media (e.g., a strong reliance on volunteers) and the National Association of Local Broadcasters (Organisatie van Lokale Omroepen in Nederland - OLON) is a member of the Community Media Forum in Europe. In the case of Malta, the Broadcasting Act defines a 'community radio service' as a service designed to cater to the needs of a particular community or locality, and having a limited reception range.

The MPM2015 assessed whether the national laws of the states assessed distinguishes community media from commercial and public media, and whether the law safeguards the independence of community media. The results showed that only seven countries have the two legal safeguards in place (Austria, Germany, Lithuania, the Netherlands, Slovakia, Spain, Sweden), while most of the other countries do not even recognise community media in their legal framework.

3.3.2 The role of the PSM

To assess the internal dimensions of pluralism, the MPM2015 examined¹³⁰ whether PSMs in EU19 broadcast local news programmes regularly, and whether they are obliged to have:

- a minimum proportion of regional or local communities involved in the production and distribution of content;
- national news available in local languages;
- their own local correspondents;
- a balance of journalists from different geographical areas.

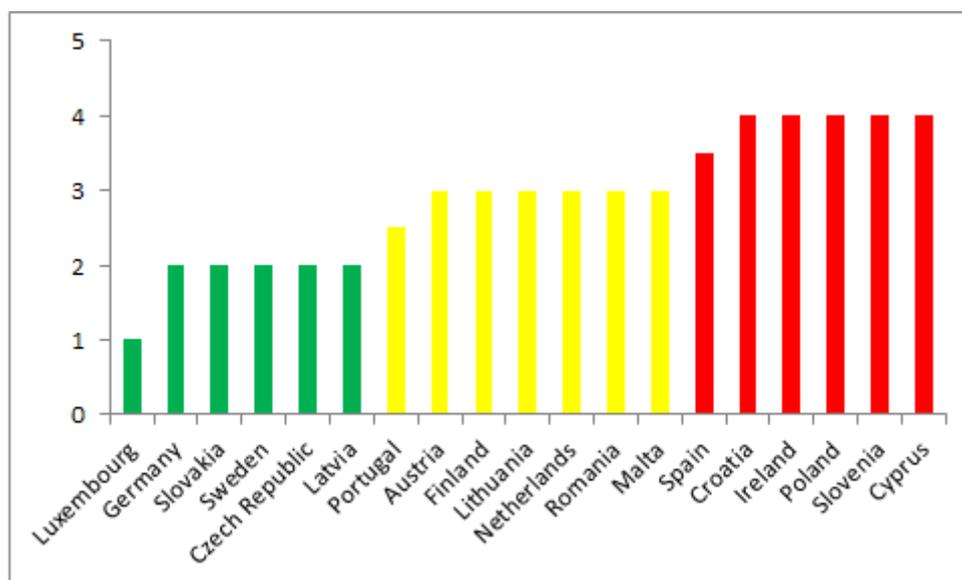
The results showed that none of the countries fulfilled all of the four safeguards considered, and that six of the countries were at a high risk by fulfilling only one of four safeguard mechanisms (see the countries marked in red in Figure 1).

¹²⁹ The indicator of the availability of media platforms for community media shows a very mixed picture, with five countries scoring a low risk, eight a medium risk, and six a high risk (see MPM2015 report).

¹³⁰ Following the overall risk assessment for the relevant indicator ('Access to media of different social and cultural groups and local communities'), including the variables on social and cultural groups, most countries are in the medium risk band; six countries, geographically distributed evenly across the EU, are in the low risk band; and three small countries (Cyprus, Ireland and Malta) show a high risk.



Figure 1. The levels of risk to regional and local media in relation to the role of PSMs¹³¹



Source: MPM2015

The MPM2015 demonstrated that in Sweden, Germany and the Netherlands, the PSMs have a clear role of safeguarding regional and local media. The Swedish broadcasting licence and the German Interstate Broadcasting Treaty oblige the PSMs to have a minimum proportion of regional and local communities involved in the production and distribution of content. In the Netherlands, the local public broadcasting media have to comply with a so-called 'production norm' that stipulates that 50% of programmes should be in-house productions, and therefore should be produced within the community and with the members of that community.¹³² Moreover, in Germany, the public broadcasters (with the exception of ZDF, Deutschlandradio and Deutsche Welle) are, by definition, regional broadcasters, and have broadcasting centres located in different regions.

The MPM analysis also indicated that the issue of PSM safeguards for regional and local media is generally not as relevant for small countries, such as Luxembourg, Cyprus and Ireland. Luxembourg is defined as a 'local state', which means that the local news is generally considered to be national news. Similarly, due to the small size of the country, in Cyprus, news about events in places other than the capital, which could be considered 'local', is part of the national news programmes.

The MPM2015 assessment also revealed that an overwhelming majority of the PSMs in EU19 (14 of 19) broadcast local news programmes regularly. At the same time, none of the PSMs in EU19 are required to have a balance of journalists from different geographic areas.

¹³¹ Figure 1 shows how many of the five safeguards were fulfilled by each of the countries, e.g. Luxembourg fulfilled 4 of 5 safeguards (variables) assessed in MPM2015 and is therefore marked with green color, while Cyprus fulfilled only 1 of 5 safeguards and is therefore marked in red.

¹³² Sources: Local public media institutions and the Media Act: Rules for local public broadcasting in the Netherlands (Publieke lokale media instellingen en de Mediawet: Spelregels voor de lokale publieke omroep in Nederland). Cf. CvdM, 2013: 2. <http://www.cvdM.nl/wp-content/uploads/2013/04/Publieke-lokale-media-instellingen-en-de-Mediawet.pdf> and Grosheide & De Cock Buning (2007, p. 139). Hoofdstukken Communicatie- & Mediarecht [Chapters Communications & Media Law] (Eds.).



3.4. The new version of the MPM in 2016

After the pilot implementation of the MPM in 2015, CMPF streamlined the variables and indicators of MPM2015 in order to better capture the risk for media pluralism at the regional and local levels. For that purpose, some of the variables were reformulated, or were removed from the new version of the MPM (MPM2016), while others were added so as to address the inconsistencies identified during the 2015 implementation. Furthermore, to improve coherence it was decided to group all the variables that deal with regional and local media in one indicator, which was named “Access to media for local/regional communities and for community media”.

The new indicator retains all the key risk dimensions related to both external and internal pluralism. The external risks are evaluated through an assessment of the legal safeguarding of access to media platforms and of the independence of regional/local and community media, the availability of state subsidies and other policy measures, and the effectiveness of the existing safeguards. The internal risk assessment has been limited to an examination of the obligations of the PSM to keep their own local/regional correspondents and to have national news available in regional and minority languages.¹³³ Additionally, a question asking whether subsidies for the support of community media are proportionally distributed across communities was added to MPM2016, in order to detect any systematic advantage or disadvantage afforded to certain community media. The results of the last version of the MPM tool will be available at the end of 2016.

3.5. Conclusion

The MPM experience suggests that an effective policy for safeguarding regional and local pluralism should be based on a holistic approach to a media system, which considers both internal and external pluralism perspectives. This means that a regional media policy should encompass both relevant provisions for the PSM and for government support, in order to guarantee a vibrant local media landscape.

The 2015 comparative analysis of 19 EU countries revealed that member states’ policies and regulations are tackling regional and local pluralism in different ways, based on the specificities of the country. A common denominator is the availability of legal safeguards, both in terms of the legal recognition of regional and local media, and of frequency reservation. Presence of these factors indicates that the legal framework acknowledges the importance of regional and local media in many European countries. In contrast, most of the EU19 do not recognise community media in their legal framework, which suggests a certain risk for pluralism when communities are regionally based. It is disconcerting that, despite the availability of legislation on regional and local media in most countries, only a small number of the countries have implemented it effectively.

Finally, the MPM analysis shows that the sustainability and viability of regional and local media is a problem in many countries. In several countries, regional and local media are simply not viable due to the scarcity of resources. Only a number of the analysed countries have a large variety of subsidies or policy measures for regional and local media. The scarcity of resources has led,

¹³³ The variables of MPM2015 that assessed whether the PSMs were broadcasting local news programmes regularly and whether they are obliged to have a balance of journalists from different geographical areas, were removed, since the results showed very little variation across countries and were considered to be issues that were of limited importance to pluralism.



especially in some countries of East-Central Europe, to a reliance of local media on local government subsidies, by which there is a risk to the political independence of the local media.



4. Regional and local television in Europe: a vast and varied panorama

Deidre Kevin, EAO

4.1. The varied nature of public regional broadcasting in Europe

Of the more than 13,000 TV channels in the MAVISE database, almost 60% are local or regional (or windows). The MAVISE database has been developed by the European Audiovisual Observatory and it catalogues the audiovisual services and companies in Europe.¹³⁴ This proportion of local TV channels provides some indication of the enormity of the local television landscape across Europe. In comparison to the available data on national and pan-European channels, the local market is much more difficult to research due in part to the scarcity of information, and also due to the impossibility of maintaining an accurate overview of any changes. Whereas it is relatively easy to monitor local television in the United Kingdom (where 20 services exist), it is difficult to have an overview of the services at the sub-national level in Italy (which has more than 1800 local DTT channels) or in the Russian Federation (which has close to 1500).¹³⁵

Regarding access to information, in Spain (with more than 500 local services) there is currently no comprehensive list available.¹³⁶ Where lists of channels are available, it is sometimes possible to have an understanding of which channels may be public or private, but a clear view of the funding or financing, or indeed ownership, of local television on a pan-European level is very difficult to achieve.

Table 2, at the end of this chapter, provides an overview of the local and regional services in Europe (in as far as is permitted by the data available) and, where possible, categorised regarding type, and public or private status.

Regional public broadcasting on the other hand is much more transparent as a TV landscape, and allows for a mapping of the organisation and services provided. The following section outlines the varied approaches taken in the provision of public service television at the regional level. The

¹³⁴ MAVISE Database on TV and on-demand audiovisual services and companies in Europe, European Audiovisual Observatory, Strasbourg, <http://mavise.obs.coe.int/welcome>.

¹³⁵ This data was recently updated in MAVISE via a Russian research institute

¹³⁶ In the case of Spain, DTT local channels were updated with reference to the listing on the local multiplexes.



mapping of the services is provided in Table 1. A fundamental challenge to the task of mapping the world of regional or local TV in Europe lies in the very definition of regional television, and indeed of what constitutes a “region”.

Starting with the countries that have a federal structure of governance, and hence a very clear regional structure, one can already note a wide variety of approaches to regional public TV. For several federal countries, distinct independent regional channels have developed: Belgium, Spain, and Bosnia and Herzegovina, which are often broadcasting in several different languages. In the Swiss case, one broadcaster has four language units.

The German federal system comprises nine independent regional broadcasters that are joined in a consortium and share programming across the network, and on the national channel ARD. The Austrian system works on the basis of news windows from the Länder.

In the United Kingdom, the two major networks, the BBC and the private network of “channel 3” (ITV network with public obligations), usually operate on a “regional window” approach with regard to news broadcasts. However, with regard to the “devolved nations” of Northern Ireland, Scotland, and Wales, the regional services are more similar to stand-alone channels with a far higher level of production and local content.

For the non-federal countries the regional system is also linked to administrative regions, but the way in which these are served can be quite different. For example, stand-alone channels, broadcasting windows, or regional studios contribute programmes or news to the main national channels.

The provision of services for minority groups or minority languages may also be linked to a region or regions where these groups live.

Several small countries, including Cyprus, Estonia, Malta, Luxembourg, Latvia and Lithuania, appear to have no regional structure in public broadcasting, perhaps precisely because of their size. The following outlines the spectrum of types of regional services.

4.1.1. Distinct regional public broadcasting companies

The three communities of Belgium (Flemish, French and German-speaking) each have responsibility for audiovisual communication and constitute separate markets. They each have their own systems of regulating the audiovisual media and their own public service broadcasters, namely the VRT, the RTBF, and the BRF, respectively.

The public service television system reflects the political system of Bosnia and Herzegovina. There is one statewide public service broadcasting (PSB) channel, BHT1, and two public channels of the two political entities of the federation: FTV (Radio Television of the Federation of Bosnia and Herzegovina) and RTRS (Radio Television of Republika Srpska).

In Spain there are 12 autonomous regional public broadcasters (five autonomous regions do not have regional public broadcasters). The channels together formed a federation, the *Federación de Organismos o Entidades de Radio y Televisión Autonómicas* (Federation of Autonomous Broadcasting Companies - FORTA), which currently has eleven members. The federation works



together in negotiating film rights and dealing with news services, advertisers, and sports rights. They also co-operate and co-produce some projects.¹³⁷

Dutch regional broadcasting formerly operated via a system of 13 separate regional public broadcasters. They worked together via a “foundation that developed general policy for the broadcasters, acted on their behalf with regard to political matters and negotiated in their name with the personnel of the regional broadcasters about general working conditions”: the ROOS foundation (Stichting ROOS). Following changes to the law in March 2016, the ROOS foundation will be replaced by one organisation responsible for public broadcasting at a regional level.¹³⁸

In Montenegro there are three separate public regional channels: TV Budva, TV Nikšić and TV Pljevlja.

4.1.2. Associated regional public broadcasting companies

As mentioned above, the German federal system also comprises nine independent regional broadcasters. However these are more closely interconnected, in that they are joined in a consortium and share programming across the network, and on the national channel ARD.

4.1.3. National public broadcaster with sub-units for languages

The Swiss public broadcaster SRG-SSR includes four sub-units: Schweizer Radio und Fernsehen (SRF), responsible for broadcasting radio and television in German; Radio Télévision Suisse (RTS), responsible for broadcasting radio and television in French; Radiotelevisione svizzera di lingua italiana (RTI), responsible for broadcasting radio and television in Italian; and Radio Television Rumantscha, responsible for broadcasting radio and television in Romansch.¹³⁹

4.1.4. Specific language channels (associated with specific regions)

In the UK there are two specific broadcasters broadcasting in minority languages. One is BBC Alba, a joint venture between the BBC and MG Alba, which broadcasts in Scottish Gaelic. It produces a wide range of its own programming.¹⁴⁰

The second is S4C, a channel available nationally in the UK, which broadcasts in the Welsh language. It has a regional (national in Wales) focus. The channel broadcasts more than 115 hours of Welsh language programmes each week.

The channel TG4 is available nationally in Ireland, and broadcasts in Irish Gaelic. As the language is strongest in the Gaeltacht (Irish-speaking regions mainly on the western coast), one

¹³⁷ See chapter 9 for more details.

¹³⁸ See Chapter 7 for more details and the proposed changes to the coordination of the broadcasters.

¹³⁹ See Chapter 10 for more details.

¹⁴⁰ See Chapter 11 for more details.



could consider the broadcaster as serving regional communities, although its audience share shows that it is eighth highest rating at the national level.¹⁴¹

In Turkey, the public broadcaster TRT has a dedicated Kurdish language channel, TRT KURDÎ.

4.1.5. Regional public service channels of the national public broadcasters

Regional public service channels of the national public broadcasters, as in the Portuguese case, may also include those serving overseas territories, such as RTP Azores and RTP Madeira.

RTV Slovenia has two regional public channels: Televizija Koper Capodistria in the west, with both Slovenian and Italian versions, and Televizija Maribor in the east, including Hungarian-language programming.

For many national public broadcasters, one national channel is designated as the “regional” channel, distributed nationally and either including the broadcast windows, as outlined below, for France 3 (France), Rai 3 (Italy), TVP3 Regionalna (Poland), ORF2 (Austria); or using regional studios as a source for content, as in ERT3 (Greece), TVR3 (Romania), or HRT4 (Croatia).

4.1.6. Regional (broadcast) windows of national public broadcasters

The ORF’s regional studios in the nine Austrian Federal Provinces produce their own radio programmes, as well as half an hour of regional TV news every day, which are broadcast in the local windows of ORF 2.

In Bulgaria, the channel BNT2 has programming and news from its four regional centres.

The regional studios of the Czech public broadcaster CT are: Television Studio Ostrava, which contributes about 5% of broadcasting to all channels, producing drama, film, documentaries, educational TV magazines for children and young people, environmental issues, religion, culture and entertainment; and Television Studio Brno, which produces all types of programming, including regional news coverage. CT has an obligation to allocate 20% of its content to regional content.

In Denmark, the eight TV 2 regions are independent companies with their own journalistic coverage, and are financed by licence fees. The regions have regular news broadcasts several times a day in the regional windows on TV 2’s main channel, and these programmes are among the most-watched news programmes. TV 2 regions closely cooperate with TV 2, particularly with regard to TV news.

France 3 is the public service channel of the France Télévisions group, and is focused on the French regions. It operates 24 regional and local windows that each provides programming for their respective regions. In Italy Rai 3 hosts the news window TGR (Testata giornalistica regionale), which operates through 23 regional offices and four production centres. In Poland TVP3 Regionalna combines the news and programming of 16 regional windows.

The national Spanish broadcaster RTVE has a total of 17 regional and local windows throughout Spain. Only two of these approximate regional channels in terms of autonomy and

¹⁴¹ From the website of TG4: <http://www.tg4.ie/en/corporate/background/>



production: TVE Catalunya and TVE Canarias, each of which has at least six regular programmes. All regions provide a window of national news. In addition, they also have two further news broadcast windows from the Autonomous City of Ceuta (Ciudad Autónoma de Ceuta) and the Autonomous City of Melilla (Ciudad Autónoma de Melilla) (in North Africa).¹⁴²

In Romania, TVR3 is dedicated to the regions and features programming and news from the five windows: TVR IASI and TVR CLUJ, which includes Hungarian and German minority language programming; TVR TIMISOARA, which includes Hungarian, German and Serbian minority language programming; TVR CRAIOVA; and TVR TARGU MURES.

In Sweden the public broadcaster SVT has 21 regional news stations that broadcast news windows. At least 55% of SVT's own programme productions have to be made outside Stockholm. In Norway, the Norwegian public broadcaster has 11 regional windows, including one covering the Sami community, and three additional regional offices. In Finland, the Finnish broadcaster YLE has ten regional windows.

4.1.7. Regional studios of national public broadcasters as production centres

In several countries, the regional studios of public broadcasters do not fill a broadcast time slot (window) of the national public broadcasters. They may, however, produce programming used on the national services, and contribute to news reports on national TV. In addition, many also serve as the studios for regional and local radio production.

In Ireland, RTÉ works with 8 regional studios. In Hungary, MTVA operates two regional television studios in the towns of Pécs and Szeged, where the majority of ethnic minority programming continues to be produced. In Croatia, the system of broadcast windows existed only in the analogue terrestrial broadcasting era. Since then, the channel HRT 4 became a news channel and all the regional programs are now delivered over one channel, together with the national news. Regional offices/studios are used for administration and production facilities. The public broadcaster of the Slovak Republic also operates with two regional studios.

Table 1 below provides an overview of the various structures of regional public broadcasting. The table does not include Estonia, Iceland, Latvia, Lithuania, Luxembourg, the “Former Yugoslav Republic of Macedonia” and Malta as no regional public broadcasting was identified in these countries.

The first column illustrates the situation in federal countries (all of which are different in their governmental structure – and hence different headings are used as no one term can be used to describe the British, German or Spanish regional governmental entities).

¹⁴² See chapter 9 for more details.



Table 1: Regional public broadcasting in Europe (status end 2015)

Countries	Federal state TV/ devolved regions/devolved nations/Länder	Regional TV channels	Minority languages and regions	Regional studios/windows for news and other programmes	Regional studios (for reporting etc.)
AT	ORF windows			9 ORF windows from the <i>Länder</i>	
BA	2 separate public channels at sub-federal level				
BE	3 separate public broadcasters for three communities		3 languages		
BG				4 regional windows	
CH	4 Regional language units of public broadcaster SRG-SSR		4 languages		
CZ				2 regional windows of CT	
DE	9 regional PSB broadcasters from the <i>Länder</i>			24 Windows of the regional PSBs	
DK				8 regional windows of TV2	
ES	12 autonomous regional public broadcasters			19 TVE regional windows	
FI			1 Swedish channel of YLE	10 regional windows of YLE	
FR		9 overseas regional channels		24 France 3 windows	
GB	6 from the BBC in Northern Ireland, Wales, Scotland	2 from "Channel 3" network	S4C, BBC Alba	12 England BBCOne windows 13 ITV1 windows	20 sub regions of ITV
GR		ERT3			Regional studios
HR					20 regional/local studios
HU					2 regional studios of MTVA
IE			TG4		8 regional studios of RTE



IT				22 regional offices/ 4 production centres of TGR (RAI3)	
ME		3 separate public regional channels			
NL		13 separate regional public broadcasters			
NO				11 regional windows	3 regional studios
PL				16 regional windows of TVP3	
PT		RTP Azores, RTP Madeira			
RO			3 minority languages	5 regional windows	
SE				21 regional news windows of SVT	
SI		2 regional public channels of RTV Slovenia	2 minority languages		
SK					2 regional studios
TR			TRT KURDÎ		

Source: MAVISE database, public service broadcasters and CIRCUM (not including EE, IS, LT, LU, LV, MK, MT)

4.2. The private side of regional and local television

As mentioned above, the private sector, and in particular the private local TV sector, is vast and often difficult to access. As such it has proved very difficult to monitor on the MAVISE database.

From Table 2¹⁴³ it is apparent that there are a multitude of local TV channels in the Russian Federation, Spain, Hungary, Romania (400+ in each case) and Italy (1800). For many countries, the local TV market appears to be dominated by private channels, such as in Germany, Denmark, Italy, Poland, Spain, Sweden, the Slovak Republic and Turkey. However, it is not possible to track the extent to which local channels may be linked to municipalities, or whether they receive public support alongside any commercial revenues. Whilst the Hungarian list of local channels, for example, clearly distinguishes between private, public and non-profit local TV, this is not always the case for the other countries.

¹⁴³ Note that some of the data in the table is based on estimates, in particular where there are vast numbers of local television channels



Because of the difficulty in assessing exactly whether a channel has a regional or local focus, providing a clear overview of regional private TV is not possible without more detailed information from national authorities. However, it is clear from Table 2 that there are many private operators at the regional level in Spain,¹⁴⁴ which are primarily at the autonomous community level.

Private regional TV channels are also prevalent in Italy, Greece, Slovenia and the Slovak Republic. The number of channels of the latter two, in particular, is high relative to the size of the country.

There are several national private TV channels that provide broadcast windows for regions (space for regional news or programming). These include the German channels Sat.1 and RTL, the Dutch SBS6, ITV in the UK as outlined above, and many of the major Russian networks (Ren TV, GTRK etc.). Such windows constitute approximately one third of the private services that operate on a regional level in Europe.

Table 2 uses the data available in MAVISE to map the local and regional landscape including both public and private (bearing in mind that data on private local TV is not comprehensive for the reasons already outlined above). Where estimates are included (such as in Spain), this is on the basis of accepted market and regulator estimates.¹⁴⁵

Table 2: A snapshot of local and regional television channels across Europe (status end 2015)

	Public regional (federal countries)	Private regional channels (federal countries)	Public regional channels /windows	Private regional channels/ windows	Mixed funding	Public local channels /cities/ municipalities	Private local channels	Mixed funding local	"Open channels", community channels/ non-profit
AT			9	6		1	79		1
BA	2					12	39		
BE	8				12		12		
BG			4	44 ⁽¹⁾					
CH	12			4			14		
CY							2		
CZ			2	12			43		
DE	9		24	15		1	176		27
DK			8	3		7	229		
EE				3					
ES	25	31	19	4		72	394 ⁽²⁾		
FI			1				44		

¹⁴⁴ See Chapter 9 for more details.

¹⁴⁵ In Spain, licences at the local level are granted by regional governments or regulators. Currently no comprehensive list is available. The estimate here is based on research on the DTT multiplexes, and Internet searches regarding cable channels.



			(Swedish) 10 windows						
FR			24 windows (+ 9 overseas regional channels)			60	92	22	
GB	6		12	13				20	
GR			1	33			48		
HU			2			105 ⁽³⁾	383 ⁽³⁾		25
HR								20	
IE									3
IT			22	68 ⁽²⁾			1800		
LT							40		
LU				2					
LV				6			25		
ME			3				7		
MK				11			29		
NL			13	23		206	29		
NO			11				33		
PL			16				218		
PT			2 regional overseas				1		
RO			5	12			315		
RU			27	546		195	1099	5	
SE			21				68		13
SI			2	22			19		
SK				46			110		
TR				23			214		

Source: MAVISE database (not including HD versions of channels), regulator lists, broadcaster websites, CIRCOM

- (1) Unclear whether channels public or private
- (2) Estimated figures (based on market or regulator info)
- (3) Unclear whether channels local or regional





Part 2 – Regional and local broadcasting in selected countries





5. Germany

Gianna Iacino, EMR

5.1. General Introduction

Regional media play a crucial role in Germany, especially with regard to ensuring media diversity. The Inter-State Broadcasting Agreement (RStV) contains four important rules on the promotion of regional media.¹⁴⁶ These concern regional windows, regional advertising on nationwide channels, the possibility of relaxing the rules on advertising for regional and local TV broadcasters, and platform occupancy. The provisions on regional advertising on nationwide channels were introduced into the RStV following a controversial Federal Constitutional Court decision. The procedure that led to this amendment will be discussed in more detail below. However, in the context of regional windows, too, recently there have been legal disputes on issues concerning the procedural rules as well as the constitutionality of the obligations to broadcast regional windows. These questions will also be discussed below.

5.2. Regulatory Framework

In Germany, the *Länder* are responsible for enacting broadcasting legislation i.e. Articles 30 and 70(1) of the *Grundgesetz* (Basic Law – GG).¹⁴⁷ Public service broadcasting is regulated by *Land* Broadcasting Acts and commercial broadcasting by *Land* Media Acts. Applications for licences for *Land*-wide, regional and local programmes must be made to the relevant *Landesmedienanstalt* (*Land* media authority). In order to establish standard rules for channels broadcast nationwide, the *Länder* have concluded several inter-state agreements. These include the RStV, which governs the granting of licences for these channels, and also contains a number of provisions on the promotion of regional channels. Regional windows must be included in the schedules of the two general-entertainment TV channels that have the widest national coverage (s. 25(4) RStV). In any one *Land*, regional advertising on nationwide channels is only possible if a separate licence has been granted under *Land* legislation (s. 7(11) RStV). *Länder* can enact less stringent rules on advertising for local

¹⁴⁶ Inter-State Broadcasting Agreement in the consolidated version of 1 January 2016, http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/RStV_18.pdf.

¹⁴⁷ Federal Constitutional Court decision of 28.02.1961, Cases 2 BvG 1/30 and 2/60.



and commercial TV channels (s. 46a RStV), and must-carry rules exist for platform operators that, inter alia, also comprise commercial TV channels with regional windows (s. 52b(1)(1) RStV). The purpose of these rules is to ensure diversity in the case of nationwide channels.

5.2.1. Regional window programmes

A legal definition of regional window programmes is contained in s. 2(2)(6) RStV, and provides as follows: “A regional window programme is a programme that is limited in terms of time and geographical area and provides predominantly regional content that is broadcast as part of a main programme”. The obligation to include regional windows is governed by s. 25(4) RStV: the two general-entertainment TV channels with the widest national coverage are obliged to include regional windows to broadcast political, economic, social and cultural events, and the editorial independence of the window programme provider must be safeguarded. The main broadcaster must guarantee the financing of the window programme.

The coverage of a particular channel is determined on the basis of its audience share, which is established by the *Land* media authorities’ *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK) (s. 27 RStV).

Another factor contributing to the promotion of regional diversity is the calculation of audience share, which triggers measures to ensure diversity. According to s. 26(2), 3rd sentence RStV, when a company has reached a position where it can exert a dominant influence on public opinion, two percent is deducted from the actual audience share when window programmes are included in the schedule of the company’s general-entertainment channel with the highest audience share, pursuant to s. 25(4) RStV.

5.2.2. Regional advertising

Since the entry into force of the 18th *Rundfunkänderungsstaatsvertrag* (Amendment to the Inter-State Broadcasting Agreement)¹⁴⁸ on 1 January 2016, it has been expressly set out that advertising is part of the programme schedule (s. 7(2), 1st sentence RStV). The nationwide broadcasting licence only authorises the provider to broadcast a nationwide programme, which means that regional advertising is not covered by the licence. This follows explicitly from s. 7(11) RStV, which is also a new provision. If the provider of a nationwide programme would like to broadcast regional advertising, it must apply to the relevant *Land* media authority for a separate licence. However, the Inter-State Broadcasting Agreement leaves it to the *Länder* to decide whether to enable permission to be given to broadcast regional advertising on a nationwide channel. If *Land* legislation does not provide for this possibility, there can be no regional advertising on a nationwide channel in that *Land*.

Before the amendment to the RStV there were no explicit legal provisions on regional advertising on nationwide channels. In a controversial judgment of 17 December 2014, the

¹⁴⁸ 18th Inter-State Agreement Amending Inter-State Broadcasting Agreements of 22.06.2015, http://www.medienpolitik.net/wp-content/uploads/2016/01/20150714_18_RdfkStV-1.pdf.



Bundesverwaltungsgericht (Federal Administrative Court) declared regional advertising on nationwide channels permissible, thus triggering the relevant amendments to the RStV.¹⁴⁹

5.2.3. Opt-out clause

Another important legal rule on advertising contained in the RStV for the purpose of promoting media diversity is s. 46a, according to which, in the case of commercial regional and local TV channels licensed under *Land* legislation, provisions can be enacted that derogate from;

- a) the rule in s. 7(4), 2nd sentence, RStV which provides that split-screen advertising shall be taken into account when calculating total advertising time;
- b) the rule in s. 7a(3) RStV which provides that films, cinema films and news programmes may only be interrupted once in a 30-minute period; and
- c) the rule in s. 45(1) RStV which provides that the proportion of air time given to TV commercials and teleshopping spots may not exceed 20 percent in any one hour.

A number of *Länder*, such as Baden-Württemberg, Rhineland-Palatinate and Saarland, have made use of this opt-out clause, which enables the refinancing of regional and the improvement of local commercial TV channels.

5.2.4. Platform occupancy

Another important provision in the RStV aimed at promoting media diversity through regional media is the rule on platform occupancy contained in s. 52b RStV. According to this provision, the must-carry rules (s. 52b(1)(1a) RStV) are not limited to licence-fee funded channels established by statute, but also extend to commercial channels that contain regional windows, in accordance with the obligation contained in s. 25 RStV. This is in addition to regional and local programmes and open channels (s. 52b(1)(1c) RStV). The rules in s. 52b RStV have applied technology-neutrally to all platforms since the entry into force of the 10th Amendment to the Inter-State Broadcasting Agreement on 1 September 2008.

5.3. Market Overview

The *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (German Association of Public Service Broadcasters – ARD) is made up of nine *Land* broadcasting corporations. In addition to broadcasters whose area corresponds to a specific *Land* (BR in Bavaria, RB in Bremen, HR in Hesse (HR), WDR in North Rhine-Westphalia and SR in Saarland) four cover several *Länder* i.e. Mitteldeutscher Rundfunk (MDR), Norddeutscher Rundfunk (NDR), Rundfunk Berlin-Brandenburg (RBB) and Südwestrundfunk (SWR). Regional information is provided

¹⁴⁹ See paragraph 5.4.1. of this publication.



by the ARD broadcasters both in their radio programmes and their so-called “third TV channels”. The channels that cover several *Länder* also switch to regional content.

Commercial broadcasters also offer a wide variety of regional programming: there are currently 15 general-entertainment TV channels broadcast *Land*-wide and 121 local/regional general-entertainment channels and 27 special-interest channels, as well as two educational channels. There are also 40 channels that reach fewer than 10,000 households, 12 in small broadband networks, and nine local internet TV channels. In addition to the windows on nationwide channels, there are 15 *Land*-wide windows and one local window. A list of all channels and windows broken down by *Länder* can be found at the *Land* media authorities’ website.¹⁵⁰

5.4. Recent developments

5.4.1. Federal Administrative Court’s decision on regional advertising and its consequences

The sole reason for enacting the 18th Amendment to the Inter-State Broadcasting Agreement was the introduction of the rules on regional advertising on nationwide channels. The introduction of these rules was prompted by the attempt by the ProSiebenSat.1 TV Group to broadcast regional advertising on its nationwide channels, Sat.1, ProSieben and Kabel 1.¹⁵¹ The group’s intention was to create new regional advertising markets by means of decentralised regional advertising. It claimed that its nationwide broadcasting licence also covered the broadcasting of regional advertising and that, if the Berlin-Brandenburg media authority were to take the opposite view then the group was, at any rate, entitled to have the scope of its existing licence extended. The media authority did not agree with the group’s arguments and prohibited the broadcasting of regional advertising. The *Verwaltungsgericht Berlin* (Berlin Administrative Court), to which the group then appealed, ruled in the media authority’s favour in a judgment of 26 September 2013 (Case VG 27 K 231.12), and stated that regional advertising was not covered by the nationwide broadcasting licence issued pursuant to s. 20a RStV. Advertising, the Court said, was part of the programme schedule and a nationwide broadcasting licence only permitted the broadcasting of a nationwide channel. Furthermore, the Court found that the group had no right to have the scope of its broadcasting licence extended, as there was no legal basis for such an action.¹⁵²

ProSiebenSat.1 challenged this judgment by lodging a leapfrog appeal to the Federal Administrative Court. The latter disagreed with the lower court’s decision and ruled, in a judgment of 17 December 2014 (6 C 32/13), that the broadcasting of regional advertising on nationwide channels was lawful. The Court stated that advertising was not part of the programme schedule

¹⁵⁰ *Land* media authorities’ list of TV channels, updated to April 2015, http://www.die-medienanstalten.de/fileadmin/Download/Publikationen/ALM-Jahrbuch/Jahrbuch_2015/Verzeichnis_Fernsehen.pdf.

¹⁵¹ Preliminary remarks on the draft of the Eighteenth Inter-State Agreement Amending Inter-State Broadcasting Agreements, I. Main content of the Eighteenth Amendment to the Inter-State Broadcasting Agreement, http://www.medienpolitik.net/wp-content/uploads/2016/01/20150714_18_RdfkStV-1.pdf.

¹⁵² Berlin Administrative Court, decision of 26 September 2013, <https://openjur.de/u/674779.html>. See Matzneller P., “Berlin Administrative Court Bans Regional Advertising on National Channel”, IRIS 2013-10:1/18, <http://merlin.obs.coe.int/iris/2013/10/article18.en.html>.



because that comprised only editorial content, and that the RStV contained no provisions imposing regional limits on the broadcasting of advertisements.¹⁵³

The preliminary remarks on the 18th Amendment to the Inter-State Broadcasting Agreement indicate that most of the *Länder* were “extremely critical” of the ProSiebenSat.1 Group’s plan to broadcast regional advertising “because (it) would mean competing on the advertising markets of local and regional broadcasters as well as with the press”. The Federal Administrative Court’s decision to allow regional advertising was regarded as providing an opportunity “to incorporate explicit provisions on the non-nationwide broadcasting of advertisements into the RStV”,¹⁵⁴ which now expressly states that advertising is part of the programme schedule (s. 7(2), 1st sentence RStV), and that it is the responsibility of the *Länder* to permit regional advertising on nationwide channels and issue the relevant separate licences under *Land* legislation (s. 7(11) RStV).

Lower Saxony made it clear in a minuted statement on the Inter-State Agreement that it had no intention of making use of this possibility. The draft of the coalition agreement of the government of Baden-Württemberg, which was newly elected on 13 March 2016, also contains a passage on regional advertising stating the government does not wish to make use of the possibility of permitting regional advertising on nationwide channels in order to safeguard the regional advertising markets for regional media.¹⁵⁵ In the coalition agreements of the governments of Saxony-Anhalt and Rhineland-Palatinate, which were also newly elected in spring 2016, there is no statement on permitting regional advertising on nationwide channels.¹⁵⁶

5.4.2. Regional windows: procedural rules and constitutionality

In the context of regional windows, too, two interesting decisions have recently been delivered by the *Kassel* and *Neustadt an der Weinstrasse* Administrative Courts, which dealt among other things with the question of the procedural rules relevant for the selection of regional windows.

The production company TV Illa GmbH & Co. KG provides regional window programmes, within the meaning of s. 25(4) RStV, for Hesse and Rhineland-Palatinate on the nationwide commercial general-entertainment channel Sat.1. TV Illa applied to the relevant *Land* media authorities, the *Hessische Landesanstalt für privaten Rundfunk und neue Medien* (Hessian Private Broadcasting and New Media Authority – LPR) and the *Landeszentrale für Medien und Kommunikation Rheinland-Pfalz* (Rhineland-Palatinate Media and Communication Authority – LMK), for an extension of its broadcasting licence, which was granted in both cases. After unsuccessfully challenging these decisions, Sat. 1 brought a legal action on the grounds that the decision to grant the licence was unlawful due to procedural and substantive errors. Sat. 1 argued that the licence should only have been extended after a tendering procedure pursuant to s. 31(4) RStV. Moreover,

¹⁵³ Federal Administrative Court, decision of 17 December 2014,

<http://www.bverwg.de/entscheidungen/entscheidung.php?ent=171214U6C32.13.0>. See Matzneller P., “Federal Administrative Court permits regional advertising by national TV broadcaster”, IRIS 2015, 3:1/8, <http://merlin.obs.coe.int/iris/2015/3/article8.en.html>.

¹⁵⁴ Preliminary remarks on the draft of the Eighteenth Inter-State Agreement Amending Inter-State Broadcasting Agreements, I. Main content of the Eighteenth Amendment to the Inter-State Broadcasting Agreement.

¹⁵⁵ Draft of the coalition agreement of the government of Baden-Württemberg for 2016-2021, p. 45, <https://www.gruene-bw.de/app/uploads/2016/05/GrueneBW-Koalitionsvertrag-2016-Entwurf.pdf>.

¹⁵⁶ Coalition agreement of the government of Saxony-Anhalt for 2016-2021, <http://www.mz-web.de/blob/23921574/f65903fdc8422613acbf092fe555830d/d-vertrag-200416-data.pdf>. Coalition agreement of the government of Rhineland-Palatinate for 2016-2021, <http://www.swr.de/-/id=17318942/property=download/nid=1682/ab664b/index.pdf>.



the obligation to finance regional window programmes constituted a special levy that could not be made compatible with freedom of broadcasting enshrined in Article 5 of the Basic Law.

S. 31(4) RStV is a procedural rule for granting broadcasting time to independent third parties. If a provider achieves an audience share of 10 per cent, it is obliged to grant broadcasting time to independent third parties (s. 26(5) RStV). RStV s. 31(4) provides that the relevant *Land* media authority must hold a tendering procedure for window programmes offered by third parties. Applications received must be examined to see if they are compatible with the provisions of the Inter-State Agreement and the relevant *Land* legislation. It is first necessary to consult with the main programme provider to try to select a window programme capable of being granted a licence. If no agreement can be reached, the *Land* media authority will select the applicant that is expected to make the biggest possible contribution to diversity in the main provider's programme.

The *Neustadt an der Weinstrasse* Administrative Court dismissed the action in a judgment of 1 March 2016 (Case 5 K 977/14.NW). It found that the procedural rules for independent third parties were not applicable to regional window programmes, so the *Land* media authority was not obliged to hold a tendering procedure. It went on to state that neither s. 25(4), 1st sentence RStV, which imposes an obligation to broadcast regional window programmes, nor s. 25(4), 4th sentence RStV, which imposes an obligation to finance the regional window programme, breached the principle of freedom of broadcasting enshrined in the Basic Law.¹⁵⁷

The Kassel Administrative Court held the same view in a judgment of 1 December 2015 (Case 1 K 618/13.KS). In a short oral statement of its reasons, it noted that there were no substantive or procedural grounds for finding fault with the decision to grant the licence.¹⁵⁸ In both proceedings, leave has been granted to appeal to the *Oberverwaltungsgericht* (Higher Administrative Court).

5.5. Current and future challenges

Now that the 18th Amendment to the Inter-State Broadcasting Agreement has come into force, it remains to be seen which *Länder* will make use of the power to permit regional advertising. As the amendment came about because most of the *Länder* were "extremely critical" of the plan to introduce regional advertising, it is not yet clear whether any of them will make use of this power.

However, if this should come about it is highly likely that an application will be made to operate a nationwide channel and that regional advertising will be introduced, because the hope that opening up regional advertising markets will generate higher advertising revenues is too great to ignore. This could lead to a corresponding loss of advertising revenues in the case of regional media – with adverse consequences for media diversity.

¹⁵⁷ Neustadt an der Weinstrasse Administrative Court, decision of 1 March 2016, <http://www2.miv.rlp.de/icc/justiz/nav/613/binarywriterservlet?imgUid=af3104e2-a318-1451-8b8f-960602e4e271&uBasVariant=11111111-1111-1111-1111-111111111111>.

¹⁵⁸ Kassel Administrative Court, decision of 1 December 2015, court press release: https://vg-kassel-justiz.hessen.de/irj/VG_Kassel_Internet?rid=HMdJ_15/VG_Kassel_Internet/sub/d3a/d3a1d4f4-fba3-1517-9cda-a2b417c0cf46,,11111111-2222-3333-4444-100000005003%26overview=true.htm. See Beckendorf I., "Obligation for commercial TV stations to broadcast a regional programme", IRIS 2016-3:1/7, <http://merlin.obs.coe.int/iris/2016/3/article7.en.html>.



6. Italy

Francesca Pellicanò, AGCOM¹⁵⁹

6.1. General introduction

The approach of the Italian audiovisual sector to local audiovisual media services¹⁶⁰ emerges as quite unusual when compared to other European states.

- Local television broadcasters have historically played a significant role in Italy since the beginning of their activities, formally recognised by a judgment of the Constitutional Court in 1976, no. 202, which declared the unconstitutionality of the state monopoly over the broadcasting activity.
- Since then, the number of regional and urban area broadcasters has consistently increased: during the analogue era their number was estimated at over 500, while after the digital transition they have exponentially multiplied, now at over 3000 (including the timeshift channels and the retransmission in other local areas), and at almost six per multiplex.
- Several factors have contributed to the negative trends of audience and advertising investments suffered by local media in recent years, including: the analogue switch-off of 2012, followed by a new plan of assignment of the positions of the logical channel numbering (LCN), the increasing popularity of new DTT niche and thematic channels and of on-demand services. The strong connection between the regional media and their territories is nonetheless still deemed a crucial asset in enhancing the pluralism of information.

¹⁵⁹ The opinions expressed in the present script are the author's own and do not necessarily represent the position of the Autorità per le garanzie nelle comunicazioni.

¹⁶⁰ Given the presence in Italy of audiovisual media services not only at a regional level, but also at a provincial level, it is preferable to refer to them as a whole as "local media".



6.2. The legal framework: the “local scope” and the fundamental principle of the local media activity

The Italian administrations with most competences concerning local media are the Ministry of Economic Development,¹⁶¹ the *Autorità per le garanzie nelle comunicazioni* (Italian regulatory authority - AGCOM), and the Regional Committees for Communications (Co.Re.Com.), embodied in the Regional administrations but carrying out their tasks on the basis of the competences delegated by AGCOM.

In Article 2(1) z), the Italian AVMS Code¹⁶² defines the expression “local broadcasting scope” as the exercise of a broadcasting activity in up to ten territorial areas, even when they are not bordering each other, as long as the transmission reach does not exceed 50% of the Italian population. The Code also clarifies that when the scope is qualified as “regional” or “provincial”, the broadcasting activity is limited to that territorial scope and cannot exceed the borders of the region or province.

Article 8 of the AVMS Code recognises the relevance of the local media in valorising and spreading regional and local culture, in the framework of political, cultural and linguistic unity, including some provisions regarding the protection of linguistic minorities recognised by the law. At para. 2 of the same article, the legislator stresses the protection extended to the regional and local media services provided by the Italian audiovisual media system.

In particular, the Code introduces a specific guarantee in favour of local media, stating that the national Plan of assignment of the digital terrestrial frequencies must reserve for them a third of the transmitting capacity. The adoption of the abovementioned plan is a task assigned by law to AGCOM, which has to submit it to the Regions, based on the location of the facilities. To ensure the protection of the linguistic minorities, the autonomous regions of Valle d’Aosta and Friuli-Venezia Giulia and the autonomous Provinces of Trento and Bolzano have to consent to the Plan.

Each Region has to send its remarks to AGCOM within 30 days; in the absence of any communication, the Plan is considered to have been accepted. Since the switch-off date (2012) was determined by law in 2008,¹⁶³ the Ministry of Economic Development has divided the national territory into sixteen technical areas, determining, region by region, the date for the digital transition. In the following two years, AGCOM gradually adopted the single regional plans for the assignment of the frequencies.

According to the AGCOM regulation on digital terrestrial television,¹⁶⁴ a single subject cannot attain authorisation for broadcasting more than 20% of local television programmes in the same region/province, whereas local radio can transmit to a maximum of 15 million inhabitants.

¹⁶¹ Since 2008 the Ministry of Economic Development has integrated the competences of the suppressed Ministry for Communications.

¹⁶² This refers to the legislative decree no. 177/2005 as amended in 2010, 2012 and 2015, which is also the national legal framework implementing the AVMS Directive.

¹⁶³ See Law no. 222/2007, updating the repeatedly amended Law no. 66/2001.

¹⁶⁴ Deliberation no. 353/11/CONS.



6.3. Regulatory overview, the market, and the financing of the sector

In order to settle the positions of the channels, the legislator introduced a specific provision, increasing the possibility of an efficient use of the frequencies after the 2012 switch-off. Article 32 of the Italian AVMS Code requires AGCOM to adopt a Regulation on the logical channels numbering (LCN) in order to ensure equal, transparent and non-discriminating conditions in the positioning of the channels on the automatic numeration. AGCOM is entitled to amend the Plan in order to guarantee its coherence to the market development, after having consulted with the interested stakeholders. The same article affirms the right of users to adjust and personalise the order of the channels on the digital terrestrial platform on their devices. Article 32(2), prescribes the general principles with which AGCOM has to conform.¹⁶⁵

Pursuant to these provisions, and after a public consultation involving the stakeholders, AGCOM adopted a LCN Plan with deliberation no. 366/10/CONS, attributing to the generalist (ex-analogue) channels the numbers 1 to 9, while local channels were assigned the numbers from 10 to 19 and 71 to 99. The Plan has been at the centre of a long judicial proceeding, the most recent developments of which are discussed below in section 6.5.

In a way similar to most industrial and productive sectors in Italy, particularly small- and medium-sized enterprises, the local broadcasting sector has also inevitably suffered from the economic crisis. This led to a consistent decrease in the sales of advertisement spaces, especially considering the increase in competition due to the development of the audiovisual media services sector in Italy, adding a further economic problem to a still-changing market.

The relevance to the local media activities recognised by the legislator is demonstrated in practice by the existence of a plurality of forms of financing, both at a national and regional level.

At a state level, there are currently three methods of financing: supporting measures; reimbursements and facilitations; and other forms of aid. As for the first category, since the 1990s a regulation of the Ministry has established criteria for assigning yearly contribution funds to local media. Every year, by 31 January, the Ministry issues a notice specifying the terms and modalities for the assignment of the financing measures. To gain the assignment, a local media broadcaster has to have signed the self-regulation codes on teleshopping and on protection of minors, must have fulfilled the tax payment and the contributions for their employees, and must not have been undergoing a bankruptcy procedure. The yearly amount of the financing is determined by the Ministry of Economic Development, based on the location of the broadcaster. In contrast, the Co.re.com. adopt a ranking list on the basis of predetermined criteria. Relevant reductions of these sums were decided in recent years due to the spending review.

The second form of contribution consists of partial reimbursement (80%) of the expenses for subscriptions to information services, the reduction of telephone charges and other utilities costs by 50%, and the possibility of subsidised credit for economic and productive restructuring.

As for other forms of aiding local media, the law sets out the possibility of contributions for the technological innovations and adequateness of the facilities and infrastructures, and the reimbursement of costs in case local media broadcast messages during the electoral campaigns.

¹⁶⁵ These principles and criteria are namely: a) the simplicity of using the LCN Plan; b) taking into consideration the habits of the users, with particular regard to generalist (ex-analogue) channels and local broadcasters; c) assigning the LCN position of the national channels on the basis of their genre (semi-generalist, children, information, culture, sport); d) the prevision of a specific block on numeration for pay DTT audiovisual media services; e) insertion in the terms of use of the numeration the possibility that two channels in the same genre switch their positions, after having informed AGCOM and the competent Ministry; f) ensuring the possibility of a revision of the plan on the basis of the development of the market, after having consulted the interested stakeholders.



In December 2015, a significant development occurred: the parliament decided that the financing system as defined above will be withdrawn by the future implementation of the “Legge di stabilità 2016” (the yearly act adopted by the Parliament on financial and economic stability related matters).

The law has introduced amendments to the regulatory framework concerning the public service broadcasting fees. A sub-quota of the revenue windfalls¹⁶⁶ are destined, up to a maximum of EUR 50 million, for a newly instituted “Financing Fund for pluralism and the innovation of information”. The fund will be intended for local media in substitution of the current system, and will operate on the basis of a Ministerial regulation that, at the time of this publication, has yet to be adopted; for this purpose, the Ministry for Economic development has released “Guidelines for drafting the regulation on criteria and procedure for assignment of contributions for local broadcasters and radio”¹⁶⁷ and launched in June 2016 a public consultation on them. The aim of the fund is to promote the fulfilment of public interest objectives, such as the promotion of pluralism of information, support of employment in the sector, improvement of the quality of broadcasted content, and incentives for the use of innovative technologies.

As for the regional financing, each Region is entitled to adopt regional laws¹⁶⁸ creating sustainable measures in favour of the local media, in particular regarding contributions to the costs of installing and operating the facilities.

6.4. A specific aspect of the Italian system: the “regional public service broadcasting”

The AVMS Code also indicates the specific duties given to RAI, the public service broadcaster, including tasks relating to local media matters.

The public service broadcasting framework in Italy is represented by several legal provisions,¹⁶⁹ according to which the public service is entrusted to a concessionaire on the basis of a twenty-year agreement between the state, represented by the Ministry for Economic Development, and the broadcaster, namely RAI. The agreement provides a general framework, while further provisions on duties and rights of the concessionaire are provided by the AVMS Code and the contract of public service, signed every three years by the Ministry and the public service broadcaster, on the basis of guidelines determined by AGCOM. The contract of service is very specific and detailed, defined every three years in relation to the development of the market, the technological progress and the changing needs at a cultural, national and local level.

¹⁶⁶ This refers to any income which exceeds that estimated in the budget plan.

¹⁶⁷ Available at the following link: http://www.mise.gov.it/images/stories/documenti/linee_guida_contributi_emittenza_radio-tv_maggio_2016.pdf.

¹⁶⁸ Article 117 of the Italian Constitution regards the division of legislative competence between state and the Regions. The Regions have a general competence to adopt laws, while the state can only do so in relation to the topics indicated in the Constitution. The general competence on communications systems constitutes a shared competence, meaning that, in the framework of the national law, Regions can adopt their respective regional laws.

¹⁶⁹ The main part of the provisions are in the AVMS Code, at articles 45 – 49 quater, which have been amended in December 2015 by the aforementioned Stability law, while other binding provisions can be found in law no. 249/97, establishing AGCOM and its competences – among which is included the PSB – in a few articles of law no. 223/90 on the public service broadcasting fees, law no. 103/75 as for the right of access to the programmes and as for the linguistic minorities and law no. 28/2000 for the duties on political communication and election campaigns.



The AVMS Code also provides that the public service concessionaire offers its services pursuant not only to a national contract subscribed with the Ministry, but also on the basis of regional and, for the autonomous provinces of Trento and Bolzano, provincial contracts. This gives local authorities the possibility to calibrate the local public service on the basis of the effective needs of the territory. Moreover, the Regions, by adopting laws for this purpose, may also adopt specific public service tasks that the PSB has to fulfil during the diffusion of programmes destined to local audiences.

As for measures concerning local media, in order to guarantee the linguistic minorities, the framework imposes an obligation to transmit TV and radio programmes in German and Ladin for the autonomous Province of Bolzano, in French for the autonomous region of Valle d'Aosta, and in Slovenian for Friuli Venezia-Giulia. Moreover, the public service broadcaster has to be organised on a regional basis, and its duties include the valorisation and development of local production centres, particularly for the promotion of local cultures and languages.

A peculiar aspect of the Italian public service is the prescription by law and the contract provisions to guarantee “an adequate service of information at a regional and provincial level”. The aim of the provision is easy to understand: spreading information on events currently occurring in the territory ensures a fuller and more informed civic participation.

In accordance with this goal, one of the PSB channels, RAI3, has to plan specific time blocks (“windows”) for broadcasting local information and programming on local current events during its daily programming. Due to the articulation of RAI in the territory, facilitating the presence of regional newsrooms, every day the channel reserves a portion of its programming to local information, with editions of the news focused on the territory and its specific topics. More precisely, three news edition per day are broadcasted (at 2 pm, 7.30 pm, and after midnight) including special editions for the regions and the provinces with linguistic minorities, along with daily programmes focused on local topical issues, local press reviews, weather forecasts, debate, and update on cultural local initiatives.

To ensure the dissemination of local information and the possibility for citizens to keep informed of topical issues for their territories even when they are themselves outside the territory, the satellite transmission of RAI3 channel alternately broadcasts the local news edition of the most densely inhabited regions.

6.5. Recent developments

As mentioned above,¹⁷⁰ the Plan of logical channel numbering has been the subject of a number of judgments and pleas. The judicial proceedings ended in 2016 with the judgment of the Italian Supreme Court. In 2010, a local broadcaster challenged the Plan, requesting its partial annulment and for the channel positions 8 and 9 to be assigned to local media. While the first instance administrative Court (Regional Administrative Tribunal - TAR) rejected the plea, in 2012 the higher administrative Court, the Consiglio di Stato, declared the Plan void, annulling the deliberation and requesting that AGCOM adopt a new plan.

AGCOM promptly launched a new public consultation of another draft regulation in 2012, approving a new LCN plan in 2013. Again, a local broadcaster filed an appeal against the new plan,

¹⁷⁰ See paragraph 6.3.



complaining again that the 8 and 9 numerations were not assigned to local media. While the Consiglio di Stato initially upheld the action, AGCOM and the Italian Ministry of Economic Development appealed this decision before the Italian Supreme Court, which in February 2016 issued a judgment agreeing with the positions of the administrations and declaring the plan valid.

As discussed above, the planning of frequencies for audiovisual media services on the digital terrestrial platform is among the tasks of AGCOM, in order to guarantee an efficient allocation of a scarce resource. In particular, this task has to be carried out whilst respecting the plan determined by the Regional Radiocommunication Conference of the International Telecommunication Union of Geneva, 2006.

The lack of adherence to the established principles has caused the increase of issues of the Italian local media interfering with services abroad, often even covering the signals of the broadcasting in bordering countries. Their persistence induced the Italian Government, in 2013, to adopt a law¹⁷¹ setting out provisions to terminate the interfering situations within a certain date. The possible remedies to address the situation are the voluntary release of the frequencies by the users or, if necessary, resorting to coercive deactivation of the implants combined with the imposition of compensatory fines. AGCOM has implemented this legal provision by amending the national Plan of assignment of frequencies with deliberation no. 480/14/CONS, removing from the Plan the interfering frequencies.

Moreover, the “Legge di stabilità 2015” (the Stability Law, the yearly financial act) has determined new tasks in this field for the regulatory authority. The law assigns AGCOM the duty of amending the distribution of digital terrestrial frequencies for local media, using the frequencies allocated to Italy at an international level and not assigned to national network operators broadcasting on the DTT platform. The law states that the frequencies qualified as such have to be made available for the transmitting capacity of local audiovisual media services providers. The providers will be chosen by the Ministry for Economic Development, the decision of which will be made on the basis of regional lists.

AGCOM has conducted this planning activity whilst bearing in mind the need for timeliness and effectiveness of the entry into force of the new networks and for a decreased need for investments. In line with this choice, the reuse of the same frequency is allowed in non-neighbouring areas, in order to avoid interferences and to guarantee an increased transmission capacity for local media.

6.6. Conclusions

Sustaining measures for regional and provincial media could sound strange or anachronistic in an increasingly globalised market, particularly in a field denoting a constant technological evolution, such as that of audiovisual media services. Indeed, it is in the Internet era that local media acquires more relevance than ever. This is especially true in Italy, where, for both historical and geographical reasons, and due to the presence of linguistic minorities, it is essential to maintain the “voices of the territories”, as local media have been defined on many occasions. For this reason, there is a need for a specific discipline, eventually including the appropriate political and regulatory interventions, that promotes a higher degree of economic and occupational solidity, necessary to preserve quality programming of local media, which can be considered as a service of general interest.

¹⁷¹ Legislative decree no. 145/2013, as converted by law in 2014.



7. The Netherlands

Benjamin Selier, IViR

7.1. General introduction

In the last decades of the twentieth century, regional broadcasters in the Netherlands started to develop their current structures. They slowly developed into a distinct entity within the public broadcasting system, recognised and funded by the state. The thirteen regional broadcasters started broadcasting from twelve different regions, and they were financially and content-wise rooted in their own specific region.¹⁷² The thirteen regional broadcasters were all united in a foundation, the ROOS Foundation (*Stichting ROOS*),¹⁷³ which developed general policy for the broadcasters, acted on their behalf with regard to political matters, and negotiated in their name with the personnel of the regional broadcasters about general working conditions. The regional broadcasters formed the board of this ROOS foundation. Despite their cooperation in the ROOS foundation, the regional broadcasters were essentially distinct, independent entities, which focused on their own specific region without further cooperation between the different regions.

After the 2012 Dutch general elections, the new Government set out to reform the public broadcasting system in a significant way.¹⁷⁴ The restructuring also covered the regional public broadcasting system. By a letter of September 2015, State Secretary for Education, Culture and Science, Sander Dekker informed the Parliament about a three-step scheme aimed at financial, programmatic and organisational reform of the regional public broadcasters. In order to make these changes possible the State Secretary needed to amend the Media Act 2008 (*Mediawet 2008*), the legal framework under which the regional public broadcasters operate. On 15 March 2016, the Senate finally passed the required amendments to the Media Act 2008.¹⁷⁵ This chapter provides an

¹⁷² Van der Linden, C., *Media in stad en streek*, Otto Cramwinkel Uitgever 1993, 37-40.

¹⁷³ <http://www.roosrtv.nl/roosrtv/Over%20ROOS.html>.

¹⁷⁴ Kamerstukken II, 2012-2013, 33 400, nr. 29,

<https://www.rijksoverheid.nl/onderwerpen/media-en-publieke-omroep/documenten/kamerstukken/2012/12/06/uitwerking-regeerakkoord-rutte-ii-onderdeel-media>.

¹⁷⁵ Wet van 16 maart 2016 tot wijziging van de Mediawet 2008 in verband met het toekomstbestendig maken van de publieke mediadienst (Law of 16 March 2016 amending the Media Act 2008 in relation to the future of the public media service), https://www.eerstekamer.nl/behandeling/20160330/publicatie_wet_3/document3/f=vk2sf5wyjkz8.pdf.



outline of the regulatory framework involved, the essential details of the regional broadcasting market, and specific issues surrounding regional broadcasting in the Netherlands. It will also discuss the recent developments as introduced above, and give a short overview of the current and future challenges regional public broadcasting faces in the Netherlands.

7.2. Regulatory framework

As stated above, the Media Act 2008 provides the legal framework under which the regional public broadcasters in the Netherlands operate. The Media Act 2008 was approved by Parliament in 2008 and entered into force on 1 January 2009. The Media Act regulates admission to the broadcasting system in general and sets requirements for public broadcasting, including a requirement to ensure media pluralism. The act also provides the legal basis for regional broadcasters by stating that there is a public media mission (*publieke mediaopdracht*) that consists of, inter alia, providing public broadcasting on a national, regional and local level. The public broadcasters are legally obliged to offer media content in the field of information in general, culture, education, and entertainment.¹⁷⁶

On 15 March 2016, the senate passed new amendments to the Media Act 2008 in order to reform the regional broadcasting system. The objective of the State Secretary was to transfer the administrative and financial responsibility of the regional broadcasters to the central government and reduce the budget of the regional broadcasters by EUR 17 million. As part of the plans to organise the regional public broadcasters more effectively and cost-efficiently, the amendments set up a new cooperation and coordination body for the implementation of the public media mission at the regional level. As a result of these amendments, the ROOS foundation will cease to exist in its current form, and a new single unified organisation responsible for public broadcasting at a regional level (*Regionale Publieke Omroep - RPO*)¹⁷⁷ will be created in its place. The State Secretary has announced that the ROOS foundation will be transformed in order to take up this role.¹⁷⁸ In contrast with the mere facilitating role ROOS played, this new body will be a centralised institution that is legally responsible for public broadcasting on a regional level. Instead of the thirteen independent broadcasters, the new RPO will be exclusively responsible for the outlines of regional broadcasting.

The Media Act also regulates commercial broadcasting. The regulation is essentially identical to the minimum requirements of the Audiovisual Media Services Directive. Based on this, licences can be granted for commercial radio and television. Four commercial regional radio frequencies have been made available. For audiovisual distribution, the broadcasters need to make their own deal with the distributors (i.e., cable operators, IPTV, T-DAB). The number of commercial radio and television stations is rather limited.

¹⁷⁶ Article 2.1 Media Act 2008.

¹⁷⁷ Kamerstukken II, 2015-2016, 32 827, nr. 78,

https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2015Z15918&did=2015D32319.

¹⁷⁸ Kamerstukken II, 2015-2016, 32 827, nr. 78,

https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2015Z15918&did=2015D32319.



7.3. Market overview

As mentioned in the general introduction, there are thirteen regional public broadcasters in the Netherlands, divided over the twelve provinces of the country. Each regional broadcaster is responsible for realising the public media mission and acting as the emergency broadcaster, meaning that they act as one of the main means of communication, in their own specific region, for the government during a crisis situation. Zuid-Holland, the most populated province of the Netherlands, is the only province with two regional public broadcasters. This means that there is no direct viewer competition between the different regional public broadcasters, as each public broadcaster has their own distribution area. The national public broadcaster, the NPO, is only involved to a limited extent in broadcasting on a regional level. The Media Act 2008 states that the NPO is legally obliged to inform the Minister for Education, Culture and Science about the ways in which it cooperates with regional and local public media institutions.¹⁷⁹ An example of cooperation between the NPO and the regional public broadcasters is in the field of news gathering: regional broadcasters and the national independent news organisation, the NOS, worked together under the name of *Bureau Regio* on gathering news.¹⁸⁰

Another important player on the regional level, the abovementioned ROOS foundation, represented the interests of the thirteen public regional broadcasters in the Netherlands until recently. As discussed above, the ROOS foundation will soon be replaced by the RPO, as set forth in the latest amendments to the Media Act 2008. On 1 June 2016 the supervisory board of the RPO was appointed, making it possible for the RPO to assume its coordinating role as laid out in the amendments.¹⁸¹

7.4. Specific issues regarding regional public broadcasting in the Netherlands

Two specific issues regarding the potential impact of the recent reforms to the regional public broadcasting landscape in the Netherlands are discussed in this section. The first issue is related to another important reform implemented in 2015 as part of the coalition agreement of 2012,¹⁸² through which the government gave the municipalities competence for child welfare services, unemployment and welfare services, and care for the chronically ill and the elderly.

In two letters of December 2015 and January 2016,¹⁸³ the thirteen regional public broadcasters expressed concerns about the proposed reform of regional public broadcasting, and the potential impact of budget cuts in such a context of decentralisation. In particular, the regional public broadcasters stated that they fear that a reduction of EUR 17 million in their budget will affect the performance and quality of regional journalism at a time when vital tasks and responsibilities are transferred to the regions that require strong control by independent regional journalism. Regional broadcasters insisted on the role of media as a public watchdog on a regional level, and confirmed

¹⁷⁹ Article 2.20 Media Act 2008.

¹⁸⁰ http://www.roosrtv.nl/mnu_top/Bureau%20Regio.html.

¹⁸¹ <https://www.rijksoverheid.nl/actueel/nieuws/2016/06/06/raad-van-toezicht-nieuwe-regionale-publieke-omroep-benoemd>.

¹⁸² <https://www.rijksoverheid.nl/onderwerpen/gemeenten/inhoud/decentralisatie-van-overheidstaken-naar-gemeenten>.

¹⁸³ https://www.nvi.nl/uploads/bestanden/20160126_BRIEF_regionale_omroepen_aan_Eerste_Kamer.pdf and

https://www.nvi.nl/uploads/bestanden/20151213_Brief_omroep_aan_eerstekamer.pdf.



their willingness to assume that role. However, they are concerned that such important budget cuts will make it impossible for them to do so.

The second specific issue concerns the position of the Frisian language, the Frisian regional public broadcaster, and the position of minority languages and dialects in the Netherlands in general. The Frisian language is, together with Dutch, the official language of the province Frisia (*Friesland* or *Fryslân*), and is recognised as an official protected minority language in the Netherlands as a second national language. A law on the use of the Frisian language (*Wet gebruik Friese taal*) regulates and ensures the use of the Frisian language within the Netherlands.¹⁸⁴ This official recognition and protection of the Frisian language also applies to the public broadcasters. The Frisian language was explicitly mentioned in the Media Act 2008 in order to ensure its position as an acknowledged and protected minority language in the Netherlands.¹⁸⁵ The regional public broadcaster from Frisia (*Omrop Fryslân*) who only broadcasts in Frisian, was assigned a special status to ensure the position of the Frisian language on Dutch television. When the State Secretary announced his reforms of the regional broadcasters, *Omrop Fryslân* was not the only regional public broadcaster which requested a special status in the new system. Although Frisian is the only officially recognised minority language in the Netherlands, other regional broadcasters such as *L1* from the province Limburg also requested a special status. They stated that the provincial dialect of Limburg deserved the same level of protection as Frisian.¹⁸⁶ The regional broadcasters feared that their specific culture and identity (for example their provincial language or dialect) would not be sufficiently protected in the new system under the supervision of a single unified organisation as RPO. They further feared that their loss of autonomy would lead to the (partial) loss of their specific cultural heritage. The State Secretary assured the regional broadcasters that there will be capacity in the new system for specific provincial culture and identity, but nevertheless only awarded a special status to *Omrop Fryslân*. The State Secretary stated that a special status for the Frisian language and thus for the Frisian regional public broadcaster was justified in light of the legal obligation to protect Frisian as an acknowledged minority language and second national language. Other regional dialects did not meet this requirement. A special Frisian Media Council will have the right of approval for the appointment of the editor of *Omrop Fryslân*, and will give advice when establishing annual plans and providing funding for regional radio, television and Internet in the new system.¹⁸⁷

7.5. Recent developments

The first step of the reform of the Dutch regional broadcasting system took place in 2014 with the transfer of the administrative and financial responsibility for the regional broadcasters to the central government. The second and third steps of the reform proposed by the State Secretary in 2012 were made possible by the amendments of 15 March 2016.

¹⁸⁴ Wet van 2 oktober 2013, houdende regels met betrekking tot het gebruik van de Friese taal in het bestuurlijk verkeer en in het rechtsverkeer (*Wet gebruik Friese taal*) (Act of 2 October 2013, laying down rules concerning the use of Frisian in administrative and legal matters) <http://wetten.overheid.nl/BWBR0034047/2014-01-01>.

¹⁸⁵ See, for example, Article 2.122 of the Media Act 2008.

¹⁸⁶ <http://www.1limburg.nl/l1-moet-uitzonderingspositie-krijgen-nieuwe-mediawet>.

¹⁸⁷ <http://www.mediamagazine.nl/alleen-aparte-positie-omrop-fryslan-nieuwe-mediawet/>.



The new amendments to the Media Act 2008, which have taken effect with its publication on 30 March 2016, create a legal basis for the new RPO organisation.¹⁸⁸ The RPO will be granted an exclusive ten-year “concession” (*concessie*) by the Minister for Education, Culture and Science for the realisation of public broadcasting on a regional level, and will act as a single unified organisation responsible for public broadcasting at a regional level.¹⁸⁹ In order to obtain this concession the RPO needs to submit a “concession policy plan” to the Minister in advance and resubmit another for review after five years. The plan must contain a detailed report on the ways in which the RPO wishes to shape public broadcasting on a regional level for the upcoming years. The plan should cover quantitative and qualitative goals. It must specify the content of regional programmes in general terms, the intended audience of programmes, and the resources the RPO needs to achieve these goals. It must also specify some organisational requirements, such as the nature and number of channels that is required and the frequencies needed to achieve this.¹⁹⁰

The RPO determines the relevant service areas (*verzorgingsgebieden*) and will determine which specific regional broadcaster will be responsible for the regional public broadcasting in that area. For the time being these “service areas” will remain as they were under the “old system” and will be the current provinces. It is possible that in the long term these “service areas” will change, on the basis of socio-cultural considerations. The regional broadcasting in the various “service areas” will be conducted by the regional broadcasters. For the time being these regional broadcasters will be the current regional broadcasters. The regional broadcasters decide the specific form and content they provide, while the RPO will decide the general outline of the content.¹⁹¹

The concession policy plan will be made available to the public and the Minister is legally obliged to ask the Dutch Media Authority (*Commissariaat voor de Media*) (CvdM) and the Council for Culture (*Raad voor Cultuur*) for advice concerning the plan. Based on the plan, the Minister and the RPO come to a “performance agreement”, which contains the quantitative and qualitative goals that the RPO should achieve and the possible sanctions if they are not. It is explicitly mentioned that the performance agreement does not relate to the content of specific regional programming. The performance agreement is directed at the programming in general. The RPO will be financially dependent on the central government, and will need to submit a detailed budget to the Minister and the CvdM every year.¹⁹²

¹⁸⁸ See Article 2.60a, Wet van 16 maart 2016 tot wijziging van de Mediawet 2008 in verband met het toekomstbestendig maken van de publieke mediadienst (Law of 16 March 2016 amending the Media Act 2008 in relation to the future of the public media service), https://www.eerstekamer.nl/behandeling/20160330/publicatie_wet_3/document3/f=/vk2sf5wyjkz8.pdf.

¹⁸⁹ See Article 2.60k Wet van 16 maart 2016 tot wijziging van de Mediawet 2008 in verband met het toekomstbestendig maken van de publieke mediadienst (Law of 16 March 2016 amending the Media Act 2008 in relation to the future of the public media service), https://www.eerstekamer.nl/behandeling/20160330/publicatie_wet_3/document3/f=/vk2sf5wyjkz8.pdf.

¹⁹⁰ See Article 2.60l Wet van 16 maart 2016 tot wijziging van de Mediawet 2008 in verband met het toekomstbestendig maken van de publieke mediadienst (Law of 16 March 2016 amending the Media Act 2008 in relation to the future of the public media service), https://www.eerstekamer.nl/behandeling/20160330/publicatie_wet_3/document3/f=/vk2sf5wyjkz8.pdf.

¹⁹¹ See Article 2.60n Wet van 16 maart 2016 tot wijziging van de Mediawet 2008 in verband met het toekomstbestendig maken van de publieke mediadienst (Law of 16 March 2016 amending the Media Act 2008 in relation to the future of the public media service), https://www.eerstekamer.nl/behandeling/20160330/publicatie_wet_3/document3/f=/vk2sf5wyjkz8.pdf.

¹⁹² See Article 2.60m Wet van 16 maart 2016 tot wijziging van de Mediawet 2008 in verband met het toekomstbestendig maken van de publieke mediadienst (Law of 16 March 2016 amending the Media Act 2008 in relation to the future of the public media service), https://www.eerstekamer.nl/behandeling/20160330/publicatie_wet_3/document3/f=/vk2sf5wyjkz8.pdf.



7.6. Concluding remarks

This chapter considered the relevant regulatory framework, the essential details of the public regional broadcasting market, and specific issues surrounding regional broadcasting in the Netherlands. It also discussed the recent developments regarding regional public broadcasting in the Netherlands. Although the reforms have passed the senate and entered into force,¹⁹³ it is not yet clear what the effects of the changes will be. The main challenge in the short term will be for the regional public broadcasters to realise the proposed budget cuts, without compromising the performance and quality of regional journalism. The question that remains in the long term is to the extent to which the existing regional public broadcasters can maintain their relative autonomy.

¹⁹³ See Staatsblad 2016, 114 and 115,

<https://zoek.officielebekendmakingen.nl/stb-2016-114.html> and <https://zoek.officielebekendmakingen.nl/stb-2016-115.html>.



8. France

Sophie Valais, EAO

8.1. General introduction

France has rather lagged behind its European neighbours in developing local and regional television (sometimes referred to as ‘proximity television’). There are a number of reasons for this: firstly, the French audiovisual scene has historically featured a highly centralised model favouring national channels with regional variations, rather than a substantial offering of local and regional channels. The model of public-sector regional television with FR3 – subsequently renamed France 3 – as a national channel of the regions was in fact set up as early as 1974. There have also been a number of other hindrances to the development of local and regional channels, including the scarcity of frequencies, constricting legal schemes, and limited methods of financing.

A change came in 1982 as the process of decentralisation got under way, accompanied by the public authorities’ desire to reinforce the role of the regions and to reaffirm their identity via local news communication media. The first private local television channels supplementing the national offer came onto the scene at the end of the 1980s, constituting a vital new feature in local life. Local authorities viewed them as an advantageous means of communicating with the population and, as such, vectors of democracy, helping to provide viewers with news and information and expressing diversity¹⁹⁴. The Government went on to adopt its ‘Cable Plan’ in 1982, which played an important role in the development of local and regional television by making such television the central element of cable distribution and requiring operators to create local channels.¹⁹⁵ There are still around sixty cable channels in existence in France, although most of them are of minor importance.¹⁹⁶ The development of digital terrestrial television (DTTV) in the 1990s and 2000s then prompted a real boom in local and regional channels in France, as the law opened up the possibility of carrying local analogue channels in full, whilst having them simultaneously on DTTV.¹⁹⁷

¹⁹⁴ French Directorate of Media Development, ‘Quelles perspectives de développement pour les télévisions locales’ (development prospects for local television), p.7, May 2003, at <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/034000244.pdf>.

¹⁹⁵ The Act of 30 September 1986 on the freedom of communication was subsequently to relax the arrangement by providing for not the obligation but rather the possibility for cable to reserve a channel for local expression.

¹⁹⁶ European Audiovisual Observatory, Mavise database, at <http://mavise.obs.coe.int/>.

¹⁹⁷ Act No. 2007-309 of 5 March 2007 modernising audiovisual broadcasting and the television of the future, at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000248397>.



The number of regional and local channels in France today is still small, however, in relation to the number of *départements*¹⁹⁸ (41 local DTTV channels for 101 *départements*). The French 'proximity television' landscape features a wide variety among the channels, and their fragile economic models,¹⁹⁹ which have changed little over the years. In 2010 the public authorities embarked on an overall rethink of the offer of regional television, in the context of this territorial reform, which gave the administrative regions new areas of responsibility.²⁰⁰ The evolution of France 3, particularly its restructuring on the basis of eight regional focal points and the abolition of advertising on public-sector television, could represent an opportunity for the local channels, as they would be in a better position to adopt the role of relaying local news and could potentially benefit from income from advertising.

8.2. Regulatory aspects concerning regional and local channels

The Freedom of Communication Act of 30 September 1986²⁰¹ constitutes the general legal framework for public- and private-sector television in France. Under conditions laid down in the Act, the French national audiovisual regulatory body (*Conseil Supérieur de l'Audiovisuel* - CSA) is responsible for managing and allocating frequencies.

The CSA regulates operators' access to the market according to the principles of general interest and diversity in the audiovisual offerings, in addition to the traditional economic criteria. It provides the framework for the creation and the content of the audiovisual services on offer, and ensures respect for fundamental values, protection for the most vulnerable audiences, and the compliance of broadcasters with the obligations incumbent on them under their terms of reference and conventions.

8.2.1. Authorisation procedures

The CSA has responsibility for launching calls for tenders from applicants wishing to provide private television services,²⁰² and for defining the geographical coverage (national or local) and the characteristics of the services concerned (television services that are free or paying, general-interest or themed, full-time or shared-time). Each successful applicant then concludes an individual agreement (*convention*) with the CSA, setting out the channel's obligations in terms of the quantity

¹⁹⁸ In France, the *département* is a territorial division that serves as both decentralised local authority, territorial district for the State's deconcentrated services, and electoral division. In 2014 the Government embarked on a major multi-decade territorial reform with the ultimate aim of cutting back on public spending and paying more attention to the public's needs. The reform came into effect starting in January 2014, with the Act modernising territorial public action and affirming the metropolises. The second part of the territorial reform, which came into force on 22 January 2016, cut the number of administrative regions from 22 to 13. The third part comprises the Act of 7 August 2015 on the new territorial organisation of France (the 'OTRe' Act); this puts new areas of responsibility in the hands of the administrative regions and redefines clearly the areas of responsibility attributed to each local authority (*département*, municipality, or inter-municipal authority). For more information, see also <http://www.gouvernement.fr/action/la-reforme-territoriale>.

¹⁹⁹ See details in section 8.3.2 of this chapter.

²⁰⁰ Act No. 2015-991 of 7 August 2015 on the new organisation of the territory of France, available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030985460&categorieLien=id>.

²⁰¹ Act No. 86-1067 on the freedom of communication (consolidated version), available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>.

²⁰² Article 31 of the Act of 30 September 1986, *op. cit.*



and quality of programming.²⁰³ The CSA then authorises the channel to broadcast; the authorisation remains valid for a maximum of ten years.²⁰⁴

A specific legal scheme is provided for the public sector, through the national programme companies. These companies are granted priority, by law, in accessing broadcasting frequencies in as much as this is necessary for them to carry out their public-service missions. The obligations incumbent on the public-sector channels are defined in terms of reference that are laid down by decree.

8.2.2. The regional public service offer

Article 44 (I) of the Act of 1986 mentioned above lays down the legal framework of the regional public service offer, in the following terms:

[...] France Télévisions shall devise and broadcast in the regions programmes which shall contribute to making the regions better known and improving their outreach and, as appropriate, the expression of regional languages. These programmes shall be broadcast in the form of specific regional variations, including at peak viewing times, and may be carried at the national level. They shall reflect the diversity of economic, social and cultural life in the regions, and shall offer local information [...].

By adopting this Article, the legislator requires France Télévisions not only to broadcast but also to devise programmes in the regions, thereby guaranteeing the existence of regional and local offices. It also enshrines the principle of regional variations, including at peak viewing times, and explicitly affirms that these regional broadcasts may be carried at the national level. The different services edited by France Télévisions are set out in detail in the company's terms of reference, which define the public-service regional channel in the following terms:²⁰⁵

[France 3 is] a national channel with a regional and local vocation, a local channel providing social cohesion and a forum for public debate. Programming on France 3 shall contribute to the knowledge and outreach of the regions and, where appropriate, the expression of regional languages. [...] The channel shall develop its coverage of the country and increase its efforts with regard to regional information, magazine programmes, documentaries, and original fiction works. [...] France 3 shall reflect the diversity of economic, social and cultural life in the regions by means of regional variations, including at peak viewing times; these programmes may be carried at the national level. [...] The programming of France 3 shall ensure the provision of national, regional and local news. More particularly it shall make every effort to develop local information, and shall report on regional and local events [...].

²⁰³ Article 30 et seq. of the Act of 30 September 1986, *op. cit.*

²⁰⁴ Article 28.1 of the Act of 30 September 1986 (as amended by the Act of 27 May 2009), *op. cit.*

²⁰⁵ Article 48 of the Act of 30 September 1986, *op. cit.* See also Decrees laying down the terms of reference of the France Télévisions national programme company (consolidated version, April 2013) at <http://www.csa.fr/Espace-juridique/Decrets-et-arretes/Decrets-portant-cahiers-des-charges-des-services-publics-de-communication-audiovisuelle/Decrets-fixant-le-cahier-des-charges-de-la-societe-nationale-de-programme-France-Televisions>.



8.2.3. Local variations of the national channels

The legal framework for local variations of private channels is defined in Article 28.12 of the Act of 30 September 1986. When their agreements with the CSA are determined, the channels are informed of the conditions for those television services with authorisation to broadcast nationwide unencrypted being authorised to also air local variations under their editorial responsibility. This is subject to a cumulative limit of three hours per day, unless this is waived by the CSA. These local variations are not considered to be separate services benefiting from local authorisations and may not include advertising spots or sponsored broadcasts.

M6 was the only channel to make use of this possibility, in 1989, by adopting a policy of local variations and broadcasting daily 'proximity' newscasts (in programmes called '6 Minutes'). At its peak it was present in eleven major urban areas, but gradually closed down its local variations until they ceased completely in 2012; in some cases the CSA considered that these were operating to the detriment of the 'truly' local channels. Currently, only BFM TV offers a specific local variation, in the Île-de-France region through its channel BFM Business.²⁰⁶

8.2.4. Local channels operated by local authorities

The Act of 9 July 2004 on electronic communications and on audiovisual communication services²⁰⁷ relaxed the constraints laid down in the Act on decentralisation of 1982,²⁰⁸ which limited investment in local channels. By virtue of this Act, a new Article L1426-1 has been inserted in the general code governing local authorities (*Code Général des Collectivités Territoriales* - CGCT), which now authorises the local authorities or their groupings to edit, either directly or indirectly, a television service dedicated to local news, regardless of broadcasting mode.²⁰⁹

The legislator does not impose the forms this intervention may take; the service may be created by a public establishment or by a commercial company. Under Article L1426-1 of the CGCT, an 'aims and means contract' (*contrat d'objectifs et de moyens* - COM) is then concluded with the local authority for a period of three to five years; the COM defines the channel's public-service missions, the conditions under which they are to be carried out, the resources made available, programming objectives, programme formats, and total air time.

8.2.5. Arrangements to counter concentration

As part of its provisions aimed at limiting the concentration of audiovisual communication companies in order to maintain diversity, the Act of 30 September 1986 contains a set of rules on

²⁰⁶ 'Mavise' database, European Audiovisual Observatory, *op. cit.*

²⁰⁷ Article 116.V of Act No. 2004-669 of 9 July 2004 on electronic communications and on audiovisual communication services, at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000439399>.

²⁰⁸ Act No. 82-213 of 2 March 1982 on the rights and freedoms of municipalities, *départements* and administrative regions (consolidated version), at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000880039>.

²⁰⁹ Article L1426-1 of the general code governing local authorities (*Code Général des Collectivités Territoriales* - CGCT'), at https://www.legifrance.gouv.fr/affichCode.do?jsessionid=233E7278B8EAE11674AB67592EE22324.tpdila11v_1?idSectionTA=LEGISCTA000006164487&cidTexte=LEGITEXT000006070633&dateTexte=20160720.



local television channels. Since the Act of 9 July 2004 was adopted, no terrestrially transmitted national television service with an average audience of more than 8 per cent of the total number of television services viewers has been able to hold less than 33 per cent of the capital or voting rights of a local channel.²¹⁰ Furthermore, the maximum audience achieved by any one operator cumulating several local authorisations, each for a local television service broadcast by DTTV, has remained fixed at 12 million viewers²¹¹ since 2004. In addition to these limitations intrinsic to the accumulation of authorisations for local television services, there are also general provisions aimed at preventing curbs on diversity at the regional and local levels across all the media generally.²¹²

8.2.6. Regulation of content and advertising

As a general rule,²¹³ the regional and local channels have more relaxed production obligations than the terrestrially-broadcast national channels.²¹⁴ The minimum volume of production over the entire year, laid down in the conventions agreed with the CSA, is in the order of twelve hours per week of local production being aired for the first time. Regarding the broadcasting of advertising spots, the Decree of 27 March 1992, on advertising, sponsorship and tele-shopping,²¹⁵ amended in 2010, provides for a specific scheme that is more favourable for local channels in terms of the maximum amount of time that can be devoted to advertising (twelve minutes per hour of broadcasting time on average, compared with nine minutes for channels broadcasting over a geographical area with a population of more than 10 million). This is laid down in their conventions and terms of reference. Furthermore, the Act²¹⁶ has allowed supermarkets to advertise on regional and local channels since 2004.

Regarding public-sector television, the Act of 5 March 2009 banned advertising between 8 p.m. and 6 a.m. on the national television services (France 2, France 3, France 4, France 5 and France Ô). This statutory ban does not apply, however, to either the regional and local programmes of the national services of France Télévisions (regional variations of France 3), or to any hypothetical metropolitan regional channels in the future.²¹⁷

²¹⁰ Article 39 III of the Act of 30 September 1986, as amended by the Act of 5 March 2009, *op. cit.*

²¹¹ Article 41 of the Act of 30 September 1986, as amended by the Act of 5 March 2009, *op. cit.*

²¹² Articles 41-2 and 41-2-1 of the Act of 30 September 1986, *op. cit.*

²¹³ With the exception of the local channels in the Île-de-France region, which cover a broadcasting area with a population of nearly 12 million.

²¹⁴ Decree No. 2010-747 of 2 July 2010 on contribution to the production of cinematographic and audiovisual works by terrestrially-broadcast television services, at

<https://www.legifrance.gouv.fr/affichTexte.do?sessionId=?cidTexte=JORFTEXT000022423813&dateTexte=&oldAction=rechJO&categorieLien=id>.

²¹⁵ Article 15.1, Decree No. 92-280 of 27 March 1992, as amended, adopted to permit application of Articles 27 and 33 of Act No. 86-1067 of 30 September 1986 and laying down the general principles defining the obligations incumbent on services editors with regard to advertising, sponsorship and tele-shopping - consolidated version at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000346165>.

²¹⁶ Article 8, Decree No. 92-280 of 27 March 1992, amended by Decree No. 2003-960 of 7 October 2003 - Article 1 in force on 1 January 2004, *op. cit.*

²¹⁷ Brucy A., 'France 3 : un avenir régional, France 3 sans les régions n'a pas de sens, les régions sans France 3 n'ont pas de force' (France 3: a regional future; France 3 without the regions is meaningless, the regions without France 3 have no strength), 1 July 2014, at <http://www.ladocumentationfrancaise.fr/rapports-publics/144000377-france-3-un-avenir-regional>.



8.2.7. The must-carry obligation incumbent on local public-sector channels

Under the terms of Article 34.2 (II) of the Act of 30 September 1986, all distributors of services via a network other than satellite and not using frequencies assigned by the CSA are required to make available to their subscribers, free of charge, any “local public-initiative services intended to provide information on local life”. This ‘must-carry’ obligation was created by the above mentioned Act of 9 July 2004 on electronic communications and audiovisual communication services, one of the aims of which was to stimulate the local public-sector channels sector.

The Act of 5 March 2009 on audiovisual communication and the new public-sector television service²¹⁸ provides that responsibility for paying the cost of broadcasting and transport lies with the editing location. The Conseil d’Etat referred to the Constitutional Council on 23 December 2015 regarding the constitutionality of this obligation in the case of *The company Iliad and another*. In its decision, delivered on 23 March 2016, the Constitutional Council declared that this provision did not contravene the Constitution.²¹⁹

8.3. The local and regional television landscape in France

8.3.1. Overview

In 2016, 31 national channels (8 in the public sector and 23 in the private sector) – 26 freeview channels and 5 pay channels – are currently available for DTTV reception in mainland France, in addition to 41 local private channels. In those parts of France not on the mainland, 8 national public-sector channels are available for DTTV reception within each local authority. The number of private local television channels may vary from one local authority to another, but most have at least one.

France also has 311 other channels intended specifically for broadcasting on other networks (cable, satellite, ADSL, optic fibre, mobile phone, etc.) which have been declared to the CSA or have signed a convention with the CSA, of which 106 are local channels (95 of them in mainland France). The themes of the channels are varied, but most are devoted either to sport, films, or music. Viewers gain access to these channels by taking out a subscription with a distributor. Some channels are included in what is called the distributors’ ‘basic offer’, while others are available as optional additions. In some instances, certain channels are only offered by certain distributors.²²⁰

8.3.2. Characteristics of the regional and local channels

Local television has adopted a number of formats in France, ranging from the regional programmes of France 3 to local television channels, including the regional variations of the major private

²¹⁸ Act No. 2009-258 of 5 March 2009 on audiovisual communication and on new public-service television, at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020352071>.

²¹⁹ See Chapter 2, section 2.5.3 of this publication, Decision No. 2015-529 QPC of 23 March 2016, at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2015529QPC2015529qpc.pdf>.

²²⁰ See CSA, ‘Composition du Paysage Audiovisuel Français : Télévision’ (composition of the French audiovisual landscape: television), at <http://clesdelaudiovisuel.fr/Connaitre>.



general-interest channels and local cable channels.²²¹ The CSA divides local television channels into three main categories:

- ‘urban’ channels present in the major urban areas, that are broadcast terrestrially and taken up on cable networks, with programming focused mainly on local news; examples include Télé Toulouse and Télé Lyon Métropole;
- ‘local’ channels, covering a larger area - a *département* or even more than one - and aimed at broadcasting local news, highlighting the local heritage and developing themes relating to the geographical, economic and tourist themes of the region: examples include TV8 Mont-Blanc and Weo;
- ‘proximity’ channels, addressing a more limited audience and mainly covering practical information and local associations; one example is TV Vendée.

The local television scene in France is particularly diverse.²²² This heterogeneity is particularly evident in the varying legal forms channels may adopt (commercial company, public establishment, foundation, association, etc.); in the sizes and broadcasting areas (potential audiences of between 3 and 10 million for the largest channels, of between 1 and 2 million, or of fewer than 1 million inhabitants); in the structure of their company capital (whether or not the channels are connected with a press group); to financing methods (different ratios of public/private financing); in their editorial approaches (local news or a more general-interest approach); and in their competition – or lack thereof – with France 3’s regional variations.

8.3.3. Income and economic viability

The income of local and regional channels broadcasting terrestrially can vary considerably from one channel to the next (from tens of thousands of euros up to several million for the largest ones). However, in most cases, the economic viability of these channels is often fragile. Most of them have the benefit of public funding in the form of contracts of aims and means (for example, on the co-production of programmes on territorial issues) or direct subsidies (through the communication budget of a local authority). In some cases, as mentioned above, local authorities intervene directly (or indirectly) in their company capital. Most of the channels that do not have the benefit of public subsidy find it difficult to balance their budgets, despite having lower running costs. France’s regional and local channels broadcasting terrestrially also bear substantial running costs in connection with DTTV broadcasting, which represent a significant part of their budgets. They also suffer from competition from the regional variations of France 3, and often find it difficult to produce new programmes.²²³

²²¹ See Opinion No. 1412 by Mr Emmanuel Hamelin, 4 February 2004, at <http://www.assemblee-nationale.fr/12/rapports/r1412.asp>, and Opinion No. 249 by Mr Louis de Broissia at the first reading before the French National Assembly of the draft of the Act of 9 July 2004, on 7 April 2004, at <https://www.senat.fr/rap/a03-249/a03-249.html>.

²²² See Analysys Mason for DGMIC and CSA, ‘Etude portant sur les conditions de réussite de la télévision locale en France sur la base d’une comparaison internationale’ (study on the conditions for the success of local television in France on the basis of an international comparison), October 2010, at https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKewiQzOPuJbOAhUDVhoKHdfCAPUQFggI MAE&url=http%3A%2F%2Fwww.culturecommunication.gouv.fr%2Fcontent%2Fdownload%2F27060%2F226116%2Fversion%2F1%2Ffile%2FAnalysys_Ma son_Rapport_final_VDEF.pdf&usq=AFQjCNGN201ODIC2sN_ZTmyLxc1ABbVxg&sig2=RzOEF9dLyHJzrQTB2HSopA&cad=rja.

²²³ Ibid.



The regional and local channels also encounter a number of obstacles in attracting commercial income and making the most of advertising space. A number of factors are involved here, including a low return on investment for advertisers given the cost of producing a television advertising spot; a constricting framework of regulations concerning promotions; a lack of coordination between local channels with regard to programming schedules; and an absence of audience measurement for these channels.²²⁴

France's regional and local channels are grouped together in two main union-type organisations: 'Les Locales TV' (channels based on the regional daily press) and 'Union des Télévisions Locales de Service Public' (TLSP). These organisations have set up joint services, more particularly for negotiating with advertising management companies and for handling the technical, financial and operational issues connected with their broadcasting.

8.3.4. France 3

The third channel of the French broadcasting company *Office de Radiodiffusion Télévision Française* (ORTF)²²⁵ was created on 31 December 1972.²²⁶ The aim of this new colour television channel, a general-interest channel intended to be national and interregional, was to provide greater exposure for ORTF's regional branches through numerous variations and the decentralised production of the channel's programmes. It became *France Régions 3* (FR3) in 1974 under the Act reforming the audiovisual scene,²²⁷ which abolished the ORTF and created seven autonomous bodies, including three national television programme companies. It was at this time that the model for public-sector regional television was set up in France, with FR3 becoming the national television channel of the regions. It was renamed France 3 in 1992, to indicate its membership of the France Télévisions group, and it now takes the form of a national channel offering its viewers a few niche areas of regional programmes in the form of regional and local variations.

Historically, the territorial organisation of France 3 evolved in accordance with the administrative organisation of the regions, firstly as part of the decentralisation advocated by President de Gaulle in the 1960s and subsequently continued under the 'Defferre laws' in 1982.²²⁸ There was a reorganisation in 2010²²⁹ following the transformation of the France Télévisions group into a joint undertaking, comprising France 2, France 3, France 4, France 5 and the overseas network *Réseau Outre-Mer*.²³⁰ Since then, the organisation of France 3's regional network has been

²²⁴ See Analysys Mason, *op. cit.*

²²⁵ See Lafon B., 'Histoire de la télévision régionale, de la RTF à la 3, 1950-2012' (history of regional television, from RTF to the third channel, 1950-2012), INA Editions.

²²⁶ Act No. 72-553 of 3 July 1972 on radio and television broadcasting in France, published in the *Journal Officiel* dated 4 July 1972, at https://www.legifrance.gouv.fr/jo_pdf.do?numJO=0&dateJO=19720704&numTexte=&pageDebut=06851&pageFin=.

²²⁷ Act No. 74-696 of 7 August 1974 on radio and television broadcasting in France, published in the *Journal Officiel* dated 8 August 1974, at https://www.legifrance.gouv.fr/jo_pdf.do?numJO=0&dateJO=19740808&numTexte=&pageDebut=08355&pageFin=.

²²⁸ Adopted from 1982 onwards, the legislation referred to as 'the Defferre laws' (in reference to the name of the Minister for the Interior and Decentralisation at the time) reflects the political desire of the left wing, which came to power in 1981, to achieve a thorough decentralisation of administration in France.

²²⁹ Act No. 2009-258 of 5 March 2009 on audiovisual communication and on the new public-sector television service, published in the *Journal Officiel* dated 7 March 2009, at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020352071&dateTexte=&categorieLien=id>.

²³⁰ *Les Outre-mer 1^{ères}* currently form a network of nine television channels and nine radio stations, operating full-time, supplemented by the same number of digital offers, all with strong local identities. *Les Outre-mer 1^{ères}* top audience ratings in nearly all the territories and have managed, despite a hyper-competitive environment, to achieve their transformation and reinforce their specificity with the arrival of overseas DTTV at the end of 2010, by relying on substantial volumes of local production (20% of their schedules) and optimising their costs



structured around four major focal points for governance²³¹ and 24 'local branches' producing news and programmes and covering most of the 22 administrative regions of mainland France.²³² There are also local editorial and news offices, totaling 113 establishments throughout France in September 2013.

France 3 remains the main territorialised audiovisual news media provider, despite the gradual expansion of the DTTV offer. The French Government has on a number of occasions recalled its attachment to France 3's proximity mission and its role in enhancing the regional heritage and the diversity of local creation. This attachment was at the heart of the priorities set out in the aims and means contract (COM) signed by the State and France Télévisions on 22 November 2011 for the period 2011-2015, which provided for an increase of 20 per cent in the proportion of regional programmes in France 3's offer over this period. This was confirmed in the codicil to the COM,²³³ signed in November 2013 for the period 2013-2015 in a general context of budget constraints. However, the codicil to the COM also emphasises the limited nature of the public-sector regional and local offering in France, and the need to rationalise and optimise the use of resources in order to ensure their future. Particular mention is made of the immense potential of France 3: its exceptional grid covers the whole country, including 24 regional branches, forming the largest editorial office in Europe with a total staff of 1500 journalists in all their regional offices. However, it is not used to its full potential and is not properly adjusted to the living areas it covers, its ageing and dwindling audiences, and the marginal place devoted to regional programmes on the air, at awkward broadcasting times.²³⁴

Faced with this inventory, in 2015 the Government embarked on a wide-ranging consideration of the public service's local offerings,²³⁵ concluding that it was necessary to set the digital offer at the heart of the network's priorities. Among the challenges it has to face, France 3 will also have to reinforce the regional offerings and redefine its broadcasting areas in keeping with the territorial reform, increase the network's production, and make changes in its professional practices. All these reforms will need to be accompanied by sufficient financial support if they are to achieve their aims.

with an efficient policy of acquiring specific programmes as a syndicate. According to France Télévisions, *Les Outre-mer 1^{ères}* have been able to take advantage of France Ô, the French national public-sector general-interest channel created in 2005, standing for overseas France in the French audiovisual landscape. It has been broadcast on freeview DTTV throughout mainland France since 2010, making overseas territories and their cultures better known to the entire general public in France. France Ô is the fifth channel in the France Télévisions satellite bundle.

²³¹ North-west, North-east, South-east and South-west.

²³² The Rhône-Alpes and Provence-Alpes-Côte d'Azur regions are served by two local branches, one covering Lyon and Grenoble, and the other Marseille and Nice. It should also be noted that the Corsican branch is not attached to any of the four centres, but constitutes a territorial unit in its own right.

²³³ See also on this point CSA Opinion No. 2013-14 issued on 11 September 2013 on the draft codicil to the aims and means contract (COM) of the national programme company France Télévisions for the period 2013-2015, at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027960737&dateTexte=&categorieLien=id> and CSA Opinion No. 2015-03 issued on 28 January 2015 on the operational rapport for the year 2013 of the codicil to the aims and means contract (COM) of the national programme company France Télévisions, published in issue no. 0049 of the *Journal Officiel* dated 27 February 2015, at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030290329>.

²³⁴ French National Assembly, Opinion submitted on behalf of the Committee on Cultural Affairs and Education on the 2014 budget proposal, Vol. V, entitled 'Médias, livres et industries culturelles audiovisuelles, avances à l'audiovisuel public' (media, books and audiovisual cultural industries, advances to public-sector audiovisual sector), by Mr Stéphane Travert, MP, on 10 October 2013, at <http://www.assemblee-nationale.fr/14/budget/plf2014/a1429-tv.asp>.

²³⁵ Brucy A., 'France 3 : un avenir régional' (France 3 – a regional future), *op. cit.*



8.4. Final comments

France Télévisions' policy orientations for 2016-2020 continue to emphasise the essential role of France 3 as a major player in strengthening both national cohesion and inter-territorial solidarity: partly by providing news and programmes that reflect the country's diversity, and partly by making it possible for public services to take root in the regions. The aim is to reinforce and make use of the offer of regional programmes, giving priority to political, economic, social and cultural news in the regions through new windows of exposure for events and local information. It is also intended that the national branch of France 3 should focus more on the regions; one of the ways of achieving this involves a reorganisation of its network.

Regarding private regional and local channels on DTTV, in recent years France has made certain regulatory improvements to make it easier for such channels to progress; such as allowing advertising by supermarket chains, relaxing anti-concentration arrangements, and making it possible for local authorities to invest in the channels' capital. However, the offer of regional and local channels in France is still relatively limited compared with its neighbours; some regions are finding it difficult to increase the number of channels, and in some regions the number of channels is even falling.²³⁶

²³⁶ Wagner-Hatfield study *op. cit.*



9. Spain

Deirdre Kevin, EAO, and Ronan Ó Fathaigh, IViR

9.1. General introduction

Spanish regional television first started in San Sebastián, when the Basque Government decided to broadcast in Basque language in 1982. The following year, Catalan TV3 was set up, with the establishment of the Catalan Corporation of Audiovisual Media (*La Corporació Catalana de Mitjans Audiovisuals*), which was a public body that managed the broadcasting service of the Catalan government (*Generalitat de Catalunya*). A second Basque channel, broadcasting in Spanish, opened in 1986. Then, in 1985 Televisión de Galicia established its own full service transmission in Galician from their station in Santiago de Compostela, covering the Galician region.²³⁷ In the late 1980s further channels were launched in Catalonia and the Basque Country, and new projects launched in Andalusia, Madrid and Valencia. In the 1990s, with the introduction of satellite television, channels were launched in the Canary Islands,²³⁸ and Castilla-La Mancha.²³⁹ From these beginnings, the regional audiovisual media landscape has changed dramatically, with the current number of regional channels at around 100 (public and private), in addition to almost 500 local channels.

Spain is divided into 17 autonomous communities, and the regional public channels in Spain are known as autonomous channels, since they are owned by their corresponding autonomous communities. The governments of the autonomous communities subsidise these channels, which also raise money via advertising. There are currently a total of twelve regional autonomous broadcasters providing 28 television channels since the closure of Canal Nou in 2013.²⁴⁰ Notably, in 1988, the autonomous channels together formed a federation, the *Federación de Organismos o Entidades de Radio y Televisión Autonómicas* (Federation of Autonomous Broadcasting Companies - FORTA), and currently has eleven members. The federation works together in negotiating film rights,

²³⁷ For more details, see Kevin D., “Snapshot: Regional and local television in Spain”, European Audiovisual Observatory, Strasbourg, 2015, http://www.obs.coe.int/documents/205595/264615/ES_Regional_TV_in_Spain_April2015.pdf/fb0a3c8b-640c-4d40-aaa4-7feac370dff9.

²³⁸ See Pérez Gómez A., “Dispute over the Participation of Private Broadcasters in Regional Public Television”, IRIS 1999-3/23, European Audiovisual Observatory, Strasbourg, 1999, <http://merlin.obs.coe.int/iris/1999/3/article23.en.html>.

²³⁹ See Pérez Gómez A., “Decree on Creation of Regional Public Television Channel in Castilla-La Mancha”, IRIS 2002-2/10, European Audiovisual Observatory, Strasbourg, 2002, <http://www.merlin.obs.coe.int/iris/2002/2/article10.en.html>.

²⁴⁰ See paragraph 9.4 below and Kevin D., op.cit.



and dealing with news services, advertisers and sports rights. They also cooperate and co-produce some projects.²⁴¹

In addition, local broadcasting has also played a very important role in the Spanish television system. Local television represents the third and most basic level of public service broadcasting. Many local corporations (*ayuntamientos*) established their own television channels in a situation of complete a-legality.²⁴² However, in 1995 the legal framework was clarified for the first time, putting in the hands of regional governments the bulk of competences in this area.²⁴³

9.2. Regulatory framework

The *Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual* (Audiovisual Act 7/2010 of 31 March 2010)²⁴⁴ provides the general legal framework for both private and public service audiovisual media in Spain, and transposes the Audiovisual Media Services Directive into Spanish law.²⁴⁵ According to the Audiovisual Act the public audiovisual media service is an essential service of general economic interest. The state, autonomous communities and local entities are allowed to provide public audiovisual media services with an aim to broadcast free-to-air general or thematic channels, excluding channels dedicated to the exclusive broadcast of commercial communications.

Of significance is the 1 August 2012 amendment to the Audiovisual Act adopted by the Spanish parliament,²⁴⁶ introducing a new legal framework for regional public service broadcasters, which allows regional public service broadcasters greater flexibility in the provision of their audiovisual media services.²⁴⁷ According to this amendment, the autonomous communities may opt for direct or indirect management of their public service broadcasters through various models, including public-private partnership.

If an autonomous community chooses not to provide public service broadcasting, it may then call for tenders to award the available licences to private service providers. Moreover, an autonomous community may transfer its public service broadcaster to a third party, in accordance with its specific legislation. If an autonomous community opts for a model of indirect management or any other instrument of public-private partnership for the provision of a public service audiovisual media service, then it may participate in the capital of the broadcaster providing this service. The amendment allows arrangements between regional public service broadcasters for joint production

²⁴¹ *Federación de Organismos o Entidades de Radio y Televisión Autonómicas* (Federation of Autonomous Broadcasting Companies - FORTA), <http://www.forta.es/>.

²⁴² Badillo, Á., "Competition, crisis, digitalisation and the reorganisation of local television in Spain", *Quaderns del CAC* 35, vol. XIII (2), December 2010, pp. 23-32, http://www.cac.cat/pfw_files/cma/recerca/quaderns_cac/Q35_Badillo_EN.pdf.

²⁴³ *Ley 41/1995, de 22 de diciembre, de Televisión local por ondas terrestres*. BOE de 27 de diciembre de 1995 (Act No 41/1995 of 22 December 1995, relating to Local Terrestrial Broadcasting, BOE 27 December 1995), <https://www.boe.es/buscar/doc.php?id=BOE-A-1995-27707>.

²⁴⁴ *Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual* (Act 7/2010 of 31 March 2010 on Audiovisual Communication), http://noticias.juridicas.com/base_datos/Admin/l7-2010.html (consolidated version).

²⁴⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0013>.

²⁴⁶ *Ley 6/2012, de 1 de agosto, de modificación de la Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual, para flexibilizar los modos de gestión de los servicios públicos de comunicación audiovisual autonómicos* (Act 6/2012 of 1 August 2012, amending Act 7/2010 of 31 March 2010), http://noticias.juridicas.com/base_datos/Admin/l6-2012.html.

²⁴⁷ See Cabrera Blázquez F.J., "Audiovisual Act Amended", IRIS 2012-8/20, European Audiovisual Observatory, Strasbourg, 2012, <http://merlin.obs.coe.int/iris/2012/8/article20.en.html>.



or editing of content for improving the efficiency of their business. It also introduces obligations for regional public service broadcasters, such as imposing a maximum limit of expenditure for the financial year in question and the obligation to submit an annual report.²⁴⁸

The national public service broadcaster, RTVE Corporation, is regulated by Act 17/2006 on state-owned radio and television,²⁴⁹ and Act 8/2009 on the funding of the Spanish Radio and Television Corporation.²⁵⁰ Act 17/2006 abrogated the Statute of Radio and Television (Act 4/1980) and defined the role of the national public service broadcaster.²⁵¹ Under the General Principles outlined in Act 17/2006, Article 3 includes (amongst others) the following public service obligations: to “promote [the] territorial cohesion, pluralism and linguistic and cultural diversity” of Spain; to offer programmes intended to be broadcast abroad, with the aim of “promoting Spanish culture” and catering to Spaniards travelling abroad or living in foreign countries; to promote the dissemination and knowledge of Spanish cultural productions, particularly audiovisual; to “support the social integration of minorities” and social groups with specific needs; to “encourage the production of European audiovisual content in Spanish languages” and promote digital and multimedia creation, as a contribution to the development of Spanish and European cultural industries.

Within the current contract of service (adopted in December 2007 by the Spanish parliament),²⁵² the aim of promoting the territorial cohesion, pluralism, and linguistic and cultural diversity of Spain is addressed under Article 9 of the contract: RTVE assumes the objective and obligations as a public service, to contribute to the construction of identity and the structuring of Spain as a country, “taking into account the existence of various nationalities and regions”. RTVE should serve as a driver and guarantor of “flows of information between the different Autonomous Communities” in its content offering. It will also “offer territorialized content in the official languages according to [the] linguistic reality of each region”.

The national public broadcaster RTVE provides two national generalist channels (and a HD version), and international, news, children’s, and sport channels. The broadcaster also has a catch-up TV service and an audiovisual on-demand service with archive films. In addition there are 17 regional and local windows in Spain, but just two of these are close to being regional channels in terms of autonomy and production: TVE Catalunya and TVE Canarias, each of which has at least six regular programmes. The 15 others appear to supply a window of national news only.²⁵³ In addition, there are also two news window broadcasts from the Ciudad Autónoma de Ceuta and the Ciudad Autónoma de Melilla (in North Africa).

²⁴⁸ Cabrera Blázquez F.J. “Audiovisual Act Amended”, IRIS 2012-8/20, European Audiovisual Observatory, Strasbourg, 2012, <http://merlin.obs.coe.int/iris/2012/8/article20.en.html>.

²⁴⁹ Ley 17/2006, de 5 de junio, de la radio y la televisión de titularidad estatal (Act 17/2006 of 5 June 2006 on National Public Radio and TV), <http://www.boe.es/boe/dias/2006/06/06/pdfs/A21207-21218.pdf>.

²⁵⁰ Ley 8/2009, de 28 de agosto, de financiación de la Corporación de Radio y Televisión Española (Act 8/2009 of 28 August 2009 on the funding of RTVE Corporation), http://www.congreso.es/constitucion/ficheros/leyes_espa/l_008_2009.pdf. See García Leiva T., “Law on the Funding of RTVE Corporation Adopted”, IRIS 2010-1/18, European Audiovisual Observatory, Strasbourg, 2010, <http://merlin.obs.coe.int/iris/2010/1/article18.en.html>. See also, Barata Mir J., “Funding scheme of the national public service broadcaster in Spain confirmed”, IRIS 2014-8/6, European Audiovisual Observatory, Strasbourg, 2014, <http://merlin.obs.coe.int/iris/2014/8/article6.en.html>.

²⁵¹ See Pérez Gómez A., “New Act on National Public Radio and Television”, IRIS 2006-6/19, <http://merlin.obs.coe.int/iris/2006/6/article19.en.html>.

²⁵² Mandato-marco a la Corporación RTVE previsto en el artículo 4 de la Ley 17/2006, de 5 de junio, de la radio y la televisión de titularidad estatal, http://www.rtve.es/contenidos/documentos/MANDATO_MARCO_18_12_07.pdf.

²⁵³ RTVE regional news: <http://www.rtve.es/noticias/informativos-territoriales/>



9.3. Market overview

The television market in Spain is characterised by the immense number of television channels available. At the end of 2014 the Spanish market had an estimated 500 local channels (about half on DTT networks), approximately 100 regional channels, and more than 230 national channels. Precise data on the local and regional television landscape is very difficult to access, although there is a great deal of data on the public regional autonomous channels.²⁵⁴

The main players in the national market are the national public broadcaster RTVE, and the companies Mediaset (with the most popular channel Telecinco, and fourth most popular Cuatro), and Atresmedia (with the second most popular channel Antenna 3 and the channel La Sexta, which is the joint-fourth most popular).

In addition to the national broadcasters, the regional public channels are known as autonomous channels, as they are owned by their corresponding autonomous communities. The governments of the autonomous communities subsidise these channels, which also raise money via advertising. There are currently a total of 12 regional autonomous broadcasters providing 28 TV channels (since the closure of Canal Nou in 2013); the autonomous communities of Castile and León, Navarra, Rioja and Cantabria (and now Valencia), do not have public autonomous channels.

It is important to note the significant role that many of the autonomous regional public channels play in their markets. On the basis of data available on the FORTA website,²⁵⁵ the most significant (in terms of audience share) of the regional autonomous channels are those from Catalonia, the Basque Country, Galicia, Aragon and Andalusia (with between 14% and 9% of daily audience share). TV3 in Catalonia, for example, is the most popular channel in that region, with higher audience shares than the national private channels Telecinco and Antenna 3.

Regarding regional private television channels,²⁵⁶ most of those communities that do not have autonomous public channels have private regional channels (in Castile and León, Navarra and Rioja). Private regional channels are also available in Asturias, Castilla-La Mancha, Catalonia, Extremadura, Galicia and Murcia. At the end of 2014, there were no private regional channels in Aragón, Canarias, Cantabria, Balearic Islands, Madrid, Basque Country or Valencia. The introduction of DTT was also significant for the development of private regional channels. More than 32 regional channels were launched (mainly via DTT tenders over the years of the introduction of DTT), and 21 of these regional channels subsequently closed between 2008 and 2014.²⁵⁷

9.4. Specific issues

A major issue in Spanish regional audiovisual media sector has been widespread closures. The MAVISE database²⁵⁸ currently contains more than 476 local Spanish channels.²⁵⁹ In 2014, the

²⁵⁴ Local TV licences are granted by the autonomous governments or by the regional regulators (where they exist). There is no comprehensive combined list of the licences granted at local level.

²⁵⁵ *Op. cit* FORTA website.

²⁵⁶ This information is developed on the basis of information from a report prepared for the Catalan media regulator (CAC) by Badillo A. (2012), and then updated according to the MAVISE database and research for this brief. The following outlines the situation of private regional broadcasting in the regions.

²⁵⁷ According to research conducted by the European Audiovisual Observatory in 2014 (Kevin D., *op.cit.*).

²⁵⁸ As noted earlier MAVISE was developed by the European Audiovisual Observatory as a database on audiovisual services and companies in Europe. European Audiovisual Observatory, Strasbourg, <http://mavise.obs.coe.int/welcome>.



Spanish DTT Multiplexes were reorganised to release frequencies for telecommunications services.²⁶⁰ In October 2014, 246 local channels were available over the DTT networks. There is also a large number of local channels on cable, but it is not possible to track these.

The research indicated that a large number of local TV channels had closed between 2008 and 2014 (approximately 300), including the Localia TV network owned by the PRISA Group. At the time, the Grupo Prisa stated that the reasons for the closure of their channels included “the Spanish economic situation and the advertising downturn in the sector, and difficulties and inconsistencies in the Spanish audiovisual policy framework”. In particular, with the transition to DTT in 2010, local television broadcasters were put at the very forefront of the process, being the first required to switch off from analogue to digital. The approval of a State frequency plan for local DTT channels in 2004²⁶¹ radically transformed the environment by creating new local geographic areas, larger than traditional ones that basically covered towns and major cities (the plan was amended in 2005²⁶²).

Moreover, some TV channels that were awarded DTT licences were closed for legal reasons. For example, several regional private channels (in the Canary Islands) along with 9 national DTT channels were closed following the 2012 Supreme Court rulings that the licensing process for these channels was invalid.²⁶³ These included a ruling declaring null and void all local allocations of DTT granted at the beginning of 2006 by the Generalitat Valenciana (Valencian regional government). The Court found that the Generalitat had lacked objectivity and impartiality in the allocation process.²⁶⁴

Eleven public regional channels closed during the same period, including the Valencian channels Canal Nou and Nou 24 in 2013.

9.5. Recent developments

As mentioned above, an amendment to the Audiovisual Act was adopted by the Spanish parliament in 2012, introducing a new legal framework for regional public service broadcasters, which allows regional public service broadcasters greater flexibility in the provision of their audiovisual media services.

While the closures of many regional broadcasters have been a feature of the Spanish regional audiovisual media sector, there have been some positive developments in this regard. First, the regulation passed in 2013 dissolving Canal Nou (Valencia's public service broadcaster) was

²⁵⁹ For the purposes of a report in 2014, a brief review of the DTT local channels in Spain was carried out in October 2014, http://www.obs.coe.int/documents/205595/264615/ES_Regional_TV_in_Spain_April2015.pdf/fb0a3c8b-640c-4d40-aaa4-7feac370dff9.

²⁶⁰ Spain approves DTT reorganisation to make way for LTE. Digital TV Europe, September 2014.

<http://www.digitaltveurope.net/245412/spain-approves-dtt-reorganisation-to-make-way-for-lte/>. A useful overview of the events leading to this re-organisation is provided in the Mapping Digital Media Spain report of the Open Society Foundation (pages 67-71), published in 2012 and written by Llorens C., Luzón V. and Grau H., <http://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-spain-20131023.pdf>.

²⁶¹ Pérez Gómez A., “New Decree on the National Technical Plan for Local Terrestrial TV”, IRIS 2004-7/14, European Audiovisual Observatory, Strasbourg, <http://merlin.obs.coe.int/iris/2004/7/article14.en.html>.

²⁶² See also Pérez Gómez A., “Decree Amending the National Technical Plan for Local Terrestrial TV”, IRIS 2005-2/19, European Audiovisual Observatory, Strasbourg, 2005, <http://merlin.obs.coe.int/iris/2005/2/article19.en.html>.

²⁶³ See García Leiva T., “Supreme Court Declares Invalid the 2010 Licensing of National Digital Terrestrial Television”, IRIS 2013-2/19, European Audiovisual Observatory, Strasbourg, 2013, <http://merlin.obs.coe.int/iris/2013/2/article19.en.html>.

²⁶⁴ Letai P., “Supreme Court Cancels all DTT Licences Awarded for Valencia in 2006” IRIS 2012-10/11, European Audiovisual Observatory, Strasbourg, 2012, <http://merlin.obs.coe.int/iris/2012/10/article11.en.html>.



repealed by the Valencian parliament in December 2015.²⁶⁵ Importantly, a new legal framework is currently being discussed,²⁶⁶ and EUR 20 million has been allocated to launch a new *Ràdio Televisió Valenciana*.²⁶⁷ Similarly, a new legal framework has been passed concerning Madrid's *Telemadrid*,²⁶⁸ while a new board of directors was also approved in May 2016.²⁶⁹

9.6. Current and future challenges

As stated above, the extent of closures in the regional audiovisual media sector in Spain is a dominant theme. Indeed, there is a strong indication of the impact of the financial crisis on the sector. This may also raise questions as to the feasibility of having a large number of television channels at the regional and local level. Despite this, it is important to bear in mind that several of the regional broadcasters are much stronger in their markets in terms of audience share than others (in particular in Catalonia, the Basque Country, Galicia, Aragon and Andalusia). For the system as a whole, the recent legislative proposals in Valencia and Madrid may indicate an improving landscape for regional audiovisual media, and the reforms seeking increasing flexibility for the sector may yet bear fruit.

²⁶⁵ Ferrandis J., "El Parlamento valenciano deroga la ley que permitió cerrar Canal 9", *El País*, 22 December 2015, http://ccaa.elpais.com/ccaa/2015/12/22/valencia/1450811344_959743.html?rel=mas.

²⁶⁶ "Un consejo ciudadano velará por la independencia de la nueva RTVV", *El País*, 11 April 2016, http://ccaa.elpais.com/ccaa/2016/04/11/valencia/1460392352_487272.html.

²⁶⁷ Serra J.M., "El Consell reserva 20 millones de euros para poner en marcha RTVV", *El País*, 9 February 2016, http://ccaa.elpais.com/ccaa/2016/02/08/valencia/1454963771_377559.html.

²⁶⁸ Ley 8/2015, de 28 de diciembre, de Radio Televisión Madrid (Law 8/2015 of 28 December 2015, on Radio Television Madrid), http://www.bocm.es/boletin/CM_Orden_BOCM/2015/12/29/BOCM-20151229-2.PDF. See Treceño J.G., "Aprobada la nueva normativa de Telemadrid con la oposición de PSOE y Podemos", *El Mundo*, 23 December 2015, <http://www.elmundo.es/madrid/2015/12/23/567a9d9246163f105f8b4590.html>.

²⁶⁹ Telemadrid, "Aprobado por unanimidad el nuevo Consejo de Administración de Telemadrid", 5 May 2016, <http://www.telemadrid.es/noticias/madrid/noticia/aprobado-por-unanimidad-el-nuevo-consejo-de-administracion-de-telemadrid>.



10. Switzerland

Oliver Gerber, BAKOM

10.1. Introduction

Features characteristic of Switzerland are its pronounced regionalism and small geographical area. Its hallmark is its linguistic and regional diversity, which is a result of its history as a continuously consolidating nation forged by the will of the people. The country has four official languages: German, French, Italian and Rhaetian. The federal state consists of 26 subdivisions called cantons, which are in turn divided into several local authority areas. The cantons and local authorities enjoy considerable powers of self-government. Switzerland is a direct democracy, and its citizens have very wide-ranging rights of political co-determination.²⁷⁰

The country's characteristics are also reflected in its media landscape.²⁷¹ A consequence of its small size and regional structure is that its media markets are also small with limited resources, further compounded by the four official languages and the proximity to the media offerings of the big neighbouring states. This means that the Swiss television broadcasters serve smaller regional markets based on a specific language whilst at the same time competing with financially powerful broadcasters from neighbouring states. The foreign channels operated by big commercial broadcasters regularly record high audience market shares in the country. These companies exploit their strong position by broadcasting advertising blocks directed at the Swiss audience, which they have done since the 1990s. These advertising blocks also put the Swiss media system under economic pressure.

Another important factor is the good coverage of cable and IPTV networks in Switzerland and the large range of TV channels, which is also due to an advantageous copyright situation.²⁷² In contrast to 30 years ago, most Swiss viewers can watch a vast number of TV channels, and independent regional channels risk being ignored as a result.

²⁷⁰ For detailed information, see "Der Bund kurz erklärt 2016", information brochure published by the Swiss Federal Chancellery, available at <https://www.bk.admin.ch/dokumentation/02070/index.html?lang=de>.

²⁷¹ For more detailed information, see Matthias Künzler, *Mediensystem Schweiz*, 2013, pp. 23 ff.

²⁷² In contrast to the EU member states, the Swiss network operators do not have to obtain the channel provider's permission to carry the channel. Under a statutory licence pursuant to section 22(1) of the Swiss Copyright Act of 9 October 1992, distributors receive that permission by paying the copyright remuneration to the collecting societies.



For all the above reasons, it is difficult for Swiss TV broadcasters to provide the population with a commercially viable range of programmes. The broadcasters have to meet a legal requirement to ensure that these programmes not only appeal to the public and are also socially and culturally relevant and help to promote democracy, whilst also contending with an additional obstacle to their market penetration. These are very high barriers, especially for a regional TV broadcaster that targets its programming to a smaller coverage area than a national broadcaster.

10.2. Legal parameters

10.2.1. The broadcasting remit in the Federal Constitution

It has always been a key concern among Swiss legislators to ensure that an independent Swiss broadcasting system is able to exist under the mentioned difficult market conditions and contribute to national cohesion, help inform political opinion, and provide a service that takes account of the country's regional and linguistic diversity.

This basic thinking is set out in the Swiss *Bundesverfassung* (Federal Constitution – BV).²⁷³ Article 93 BV states that the Federation is responsible for enacting broadcasting legislation. Paragraph 2 of this article sets out the constitutional legislators' expectations of the Swiss broadcasters in terms of a service remit:

Radio and television shall contribute to education and cultural development, to the free shaping of opinion and to entertainment. They shall take account of the specific features of the country and the needs of the cantons. They shall present events accurately and allow a diversity of opinions to be expressed appropriately.

The call for the specific features of the country, and the needs of the cantons, to be taken into consideration constitutes an obligation on the broadcasters to be inclusive. This remit to foster integration calls for Switzerland's cultural, federal and regional diversity to be expressed in the audiovisual media landscape.²⁷⁴

10.2.2. Legislation of regional public service TV

10.2.2.1. Typology of broadcasters in the law

The systematic structure of the *Bundesgesetz über Radio und Fernsehen* (Federal Broadcasting Act – RTVG)²⁷⁵ and the *Radio- und Fernsehverordnung* (Broadcasting Ordinance – RTVV)²⁷⁶, which is subordinate to and implements this Act, reflects the structure of the Swiss audiovisual media

²⁷³ Federal Constitution of the Swiss Confederation of 18 April 1999, SR (Systematic Collection of Laws) 101.

²⁷⁴ Franz Zeller/Martin Dumermuth "Kommentar zur BV Art. 93 N 24" with further references, in: Bernhard Waldmann/Eva Maria Belser/Astrid Epiney (Eds.), *Basler Kommentar zur Schweizerischen Bundesverfassung (BV)*, Helbling Lichtenhahn Verlag, Basel 2015.

²⁷⁵ Federal Broadcasting Act of 24 March 2006 SR 784.40.

²⁷⁶ Broadcasting Ordinance of 9 March 2007 SR 784.401.



landscape. Switzerland has a relatively liberal licensing regime. Most Swiss broadcasters do not need a licence but only have to notify the regulator, the *Bundesamt für Kommunikation* (Federal Communications Office – BAKOM),²⁷⁷ about their activities. They must comply with minimum standards²⁷⁸ and meet positive obligations.²⁷⁹

Only a few broadcasters, that have to fulfil specific rights and discharge obligations under a public service remit and claim rights to access means of distribution (so-called “must carry” privileges), require a licence, which is called a “concession” in Switzerland.

At the national and language-region level, public service radio and TV is provided by a single broadcaster, the *Schweizerische Gesellschaft für Radio und Fernsehen* (Swiss Broadcasting Corporation – SRG SSR), which holds a special position as the only broadcaster with the right to be granted a concession by the Federal Council. It bears the main burden of the constitutional remit and must guarantee the basic provision of radio and TV programmes throughout Switzerland’s language regions. The legislators intended this to be the case, because existing resources need to be concentrated if a Swiss broadcaster is to be able to survive in the country’s small markets amidst the powerful competition from foreign channels freely available in Switzerland.²⁸⁰ SRG SSR receives the largest share of total broadcast-reception licence fees, which amount to some 1.2 billion Swiss Francs (CHF), but may also fund itself through TV advertising revenues (totalling around CHF 340 million in 2015).

However, the legislators are not only interested in guaranteeing the national and language-regional public service. Switzerland is a federal state with geographically small structures, and a considerable proportion of democratic opinion-forming takes place at the level of the cantons and local authorities. These processes should also be reported on by electronic media,²⁸¹ so federal legislation provides for certain broadcasters to be given a remit to deliver a public service television service limited to a regional coverage area, and further provides for creating the appropriate general framework to enable these broadcasters to carry this out.

The focus of this case study is on these regional broadcasters that are responsible for providing a regional public service and as such are granted a concession.²⁸²

10.2.2.2. Award of a concession

The concessions for the regional broadcasters are awarded by the relevant Swiss ministry, the *Eidgenössisches Departement für Umwelt, Verkehr, Energie und Kommunikation* (Federal Department for Environment, Transport, Energy and Communication – UVEK), usually by way of a public invitation to tender.²⁸³ Applicants for a concession must meet a number of requirements.²⁸⁴

²⁷⁷ Section 3(a) RTVG.

²⁷⁸ Such as the protection of minors, the protection of human dignity and advertising.

²⁷⁹ Such as the support of European works, promotion of Swiss films and subtitling.

²⁸⁰ Message on the comprehensive revision of the Federal Broadcasting Act of 18 December 2002, *Bundesblatt* (Federal Gazette – BBl) 2003 No. 8, 1569ff., 1614ff.

²⁸¹ BBl 2003 1619.

²⁸² The list of licensed regional TV broadcasters together with further information is available at <https://www.bakom.admin.ch/bakom/de/home/elektronische-medien/informationen-ueber-radio-und-fernsehveranstalter/tv-regional.html>.

²⁸³ Section 45(1) RTVG.



All 13 regional television concessions were awarded by UVEK on 7 July 2008 for a period of 10 years (from 1 January 2009). There are no statutory provisions concerning the broadcaster's legal form, and all the broadcasters concerned are private companies. 11 of them are joint-stock companies, with an average capital endowment of CHF 1.6 million. One broadcaster has chosen the legal form of a non-profit association and one that of a foundation.

10.2.2.3. Regional remit with input and output criteria

The law requires regional broadcasters in the remit to take into consideration "local or regional particularities by providing comprehensive information, especially on political, economic or social issues" and make a contribution "to the development of cultural life in the coverage area".²⁸⁵ However, the broadcasters concerned only have to fulfil this information remit at peak viewing times (6.30am-8.30am, 11.30am-1.30pm, 5pm-7pm). According to their licenses, the regional and local information broadcasts shall be thematically diverse, reflect a variety of opinions and interests, allow a variety of individuals and groups to voice their opinion and take account of the entire coverage area.

In addition, there are other obligations. The broadcaster must adhere to the details concerning the scope, content, nature, its organisation and its funding of the channel, provided in its application for the concession. In multilingual coverage areas, all languages must be taken into consideration in the programme schedule. Furthermore, under their concession all regional broadcasters are prohibited from broadcasting radar trap warnings, audience competitions and pornographic advertising.

The remit does not only cover "output criteria". At the input level too, the regional broadcasters are compelled by law and under the terms of the concession to comply with labour regulations and the industry's working conditions, ensure that pre-set quality targets are met, and promote the initial and in-service training of their programme-makers.

10.2.2.4. Right to a share of broadcast-reception licence fees (fee-splitting)

In order to ensure optimum assistance to carry out the regional remit, the TV broadcasters that are awarded a concession receive financial support, and are entitled to a share of the broadcast-reception licence fees (so-called fee-splitting). In order that these fees are put to the best use, the legislators have provided that fee-splitting shall only take place when the radio or television broadcaster offers its programme service in a region without adequate sources of funding.²⁸⁶ All 13 regional broadcasters that are granted a concession receive fee-splitting.

²⁸⁴ According to Section 44(1) RTVG they must show, that they can fulfil the remit, that their funding is secured, who their capital investors are, that they comply with the industry's labour regulations, that they separate editorial content from economic activities and that they are domiciled in Switzerland. The last condition, "refraining from jeopardising the diversity of opinions and the offer", disappeared with the entry into force of the amended version of the RTVG on 1 July 2016. For more detailed information, see below 10.4.5..

²⁸⁵ Section 38(1)(a) RTVG.

²⁸⁶ Section 38(1)(a) RTVG.



The total of these fee-splitting amounts should be between 4 and 6 per cent of total licence fees.²⁸⁷ A maximum of 70 per cent of verifiable operating costs is supported,²⁸⁸ which means that a minimum level of self-finance is guaranteed.²⁸⁹

At the moment, the 13 regional TV broadcasters awarded a concession receive a total of CHF 34.6 million from the total revenues of CHF 1.3 billion.²⁹⁰ Individual amounts vary between some CHF 1.9 and 3.6 million, depending on the coverage area.

10.2.2.5. Coverage areas

The regional television concessions have been divided into 13 coverage areas that cover the whole of the country.²⁹¹ Their number and size are determined by the Swiss government, which must ensure:

- that they form a single political and geographical unit or that the cultural or economic contacts within them are particularly close; and
- that the broadcaster's existing financial resources together with an appropriate share of the fee-splitting enable it to fulfil a remit.

The Federal Council defined fewer but larger areas for regional television in 2008. This guarantees that broadcasters have sufficient commercial potential and that the total licence fees available for supporting television channels do not have to be divided up among too many broadcasters.²⁹² The less densely populated areas have an average of 300,000 inhabitants, while conurbations like Berne, Geneva and Zurich have between 500,000 and 1.6 million.

10.2.2.6. Must-carry privilege

The enshrining of must-carry privileges in Swiss broadcasting legislation provides a guarantee that regional broadcasters' services must be actually able to reach their audience. The network operators must distribute the regional public service channels on their transmission lines free of charge,²⁹³ but the broadcasters concerned bear the costs of feeding the signal to the network operator's head-end station.

²⁸⁷ Until the amendment to the RTVG came into force on 1 July 2016, the maximum proportion was 4% (see below 10.4.1.).

²⁸⁸ Section 40 RTVG.

²⁸⁹ Martin Dumermuth, "Die Revision des Radio- und Fernsehgesetzes und das duale System", ZSR 125, 2006, S. 229 ff. <258>.

²⁹⁰ The biggest share, CHF 1.2bn, is allocated to the SRG SSR (see above 10.2.1.1).

²⁹¹ Section 39 RTVG.

²⁹² Martin Dumermuth, op. cit.

²⁹³ Section 59 RTVG.



10.2.2.7. Supervision

BAKOM is responsible for overseeing the regional broadcasters that have been granted a concession. This includes both financial supervision²⁹⁴ and ensuring that the remit is fulfilled. With respect to the latter, it can commission outside experts to carry out checks²⁹⁵. It regularly asks external research institutes to conduct analyses of the regional broadcasters' programmes.

A feature of the Swiss system is that the law²⁹⁶ and the concessions awarded require all regional public service broadcasters to draw up a set of business rules containing details of the distribution of roles, an editorial statute, a mission statement and an internal quality assurance system. It further requires the public service broadcasters to have the latter assessed by an independent specialised external agency.²⁹⁷

The independent quality assurance audit is usually carried out every two years. The auditing bodies then produce an assessment report for BAKOM. Within three months after receiving the report, the television broadcaster concerned sends BAKOM an action plan indicating whether and how it intends to implement the report's recommendation in the future.

The results of the quality assurance audit and of research conducted are discussed with the broadcaster at regular annual meetings. The purpose of the discussions with the broadcaster is ultimately to raise its awareness of the fulfilment of its remit.

10.3. Challenges

As set out above, none of the 13 regional television broadcasters are viable on their own and depend on support from licence fees. Their economic situation is difficult, as indicated by programme research²⁹⁸ and the broadcasters' annual reports²⁹⁹, which indicates:

²⁹⁴ Section 42 RTVG. Broadcasters are obliged to submit their annual financial statement to BAKOM and to provide further information on request. BAKOM checks whether the financial resources are used economically and for the purpose intended. If not, it can reduce or demand reimbursement of a concession holder's share of the licence fees.

²⁹⁵ Section 47(2) RTVG.

²⁹⁶ Section 41(1) RTVG in conjunction with section 41(1) RTVG.

²⁹⁷ The quality assurance should comprise content based formal quality targets and standards (journalistic standards, editorial responsibility, programme ideas, etc.), clearly defined processes that enable regular checks to be made to see whether the specified quality targets are being met and established mechanisms to assure or improve programme quality (acceptance processes, feedback systems, etc.).

²⁹⁸ - IaKom, "Nutzung und Bewertung der Schweizer Radio- und Fernsehprogramme 2015", available at <https://www.bakom.admin.ch/bakom/de/home/elektronische-medien/bildung-forschung-archivierung/beitraege-und-studien-an-medienforschende/beitraege-und-studien-medienforschung-2015.html>.

- University of Basle, "Die Fernsehprogramme der privaten Veranstalter mit Leistungsauftrag in der Schweiz", available at <https://www.bakom.admin.ch/bakom/de/home/elektronische-medien/bildung-forschung-archivierung/beitraege-und-studien-an-medienforschende/beitraege-und-studien-medienforschung-2015.html>.

- Publicom, "Die wirtschaftliche Situation des Privatrundfunks in der Schweiz", available at <https://www.bakom.admin.ch/bakom/de/home/elektronische-medien/zahlen-und-fakten/studien/die-wirtschaftliche-situation-des-privatrundfunks-in-der-schweiz.html>.

- IPMZ, "Nutzung von Radio- und TV-Programmen in der Schweiz 2013", available at <https://www.bakom.admin.ch/bakom/de/home/elektronische-medien/bildung-forschung-archivierung/beitraege-und-studien-an-medienforschende/beitraege-und-studien-medienforschung-2013.html>.

- University of Fribourg, "Kontinuierliche Fernsehprogrammforschung in der Schweiz 2012", available at <https://www.bakom.admin.ch/bakom/de/home/elektronische-medien/bildung-forschung-archivierung/beitraege-und-studien-an-medienforschende/beitraege-und-studien-medienforschung-2012.html>.



- In 2014, the total outgoings of all broadcasters in total amounted to around CHF 80.7 million, while their advertising revenues came to around CHF 44 million.
- Commercial income covers an average of around 56 per cent of outgoings. Since 2011, revenues from advertising and sponsorship have stagnated.
- Almost half of all broadcasters are underfinanced or even in debt.
- The equity ratio averages only 23 per cent.

The consequence of the economic problems of regional public service television is that it only plays a marginal role in the Swiss TV sector:

- The market shares of these broadcasters are between 0.1 and 1.3 per cent.
- The audience potential is insufficiently exploited, and only between 3 and 17 per cent of potential viewers in the transmission area watch the regional TV channels.
- In the advertising market, the regional TV stations are of secondary importance (constituting just 5.5 per cent share of the advertising market and 0.9 percent of the media market).
- The regional TV audience is relatively old. Depending on the language region, the average age range is between 55 and 61.

Shortcomings have also emerged from assessments of channel content:

- Just less half the audience are satisfied with the regional channels' programmes.
- On the other hand, in the eyes of the public, the regional TV stations are superior with regard to their core competence, namely the provision of regional news and information. With their strong links to regional affairs, in this respect they are fulfilling their remit.
- In their information programmes a small number of regional TV broadcasters disseminate too much news of doubtful relevance for their audience, especially so-called "bad news" and "human touch" stories.

10.4. Ongoing developments

The Federal Broadcasting Act has recently been revised, and now also provides for measures to improve the situation of the regional TV broadcasters awarded a concession. The partly revised Act and the relevant implementing provisions of the Broadcasting Ordinance have entered into force on 1 July 2016. An overview of the actual changes that will affect the regional TV broadcasters is provided below.

²⁹⁹ The key figures in all the annual reports are available at <https://www.bakom.admin.ch/bakom/de/home/elektronische-medien/zahlen-und-fakten/berichterstattung-kennzahlen-der-radio-und-fernsehveranstalter.html>.



10.4.1. More fee-splitting

Subsidies from fee-splitting are vitally important for all regional television broadcasters with a public service remit. It is planned to make the statutory share of 4 per cent of total licence fee revenues more flexible, one reason being to avoid surpluses that cannot be distributed. The Swiss government will in future be able to fix the share within a band of between 4 and 6 per cent.

10.4.2. Relaxing the advertising rules

Until now, the rule that advertising may not take up more than 15 per cent of a channel's daily broadcasting time, and 20 per cent of transmission time in any one hour, has applied to all Swiss broadcasters. These conditions will be relaxed slightly for broadcasters awarded a concession by abolishing the 15 per cent limit to daily broadcasting time devoted to advertising. Regional TV broadcasters will only continue to be subject to the 20 per cent limit time in any one hour, which corresponds to the EU's advertising rules.³⁰⁰

These new regulations mean that regional broadcasters will be allowed a 5 per cent increase in possible advertising time. Such an increase will only become noticeable outside peak viewing hours, if at all. The television broadcasters concerned already exploit all the prime-time advertising time available to them.³⁰¹

10.4.3. Subsidised subtitling

In Switzerland today, only the SRG SSR and the national/language-regional TV broadcasters are obliged to adapt programmes to enable them to be watched by people with disabilities. In future, the regional public service television broadcasters will have to offer programmes for people with hearing impediments.

This means that these broadcasters will have to subtitle their main daily news programmes. The most important disabled organisations have expressed their support of this measure, as the subtitling of regional news ensures that persons with hearing impairments have a sense of belonging to the local community. As being embedded in the regional structure is a key element of the remit of the regional TV stations, it seems appropriate for them to offer their services to people with sensory disabilities too. Since this is a genuine public service remit, the legislators have provided for them to be funded via the broadcast-reception licence fee. The annual costs of this subtitling are estimated at around CHF 2.5 million, but they are expected to fall in the future as the digitisation of production and transmission technologies will lead to savings in this area too.³⁰²

³⁰⁰ Article 23 of the Audiovisual Media Services Directive 2010/13/EU of 10 March 2013, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0013>.

³⁰¹ Message of 29 May 2013 on amending the Federal Broadcasting Act, BBl 2013 No. 26, 4975ff, 5021f.

³⁰² BBl 2013 5020.



10.4.4. Promotion of digitisation

In order for the regional TV stations to also reach young viewers with their public service programming and become more competitive vis-à-vis the new media players, it is important for them to keep abreast with technical developments. In view of their difficult economic situation, digitisation is a particularly big challenge for these stations.

For these reasons, it is planned to introduce a new support mechanism that will enable digital TV production methods to be employed, for example the switch to HD and its successor standards, or the integration of hybrid broadband broadcast television services (HbbTV).

This will be funded through the fee-splitting surpluses that have accumulated over the years and have not been fully utilised. Around CHF 30 million is currently available. This form of financial support will be possible for a number of years to come.

10.4.5. Relaxation of the rules on competitive concentration

The Federal Broadcasting Act contains rules on combating media concentration in the case of regional broadcasters, which provide as follows:

- a concession can only be awarded or transferred if it does not put diversity of opinion and programming at risk;³⁰³
- a broadcaster or the company to which it belongs can acquire no more than two TV concessions and two radio concessions³⁰⁴ (the so-called “2+2 rule”);
- If several applications are received in response to an invitation to tender for a concession, preference will be given to the applicant best placed to fulfil the remit. If several applications are more or less evenly balanced from this perspective, preference will be given to the applicant that makes the biggest contribution to enhancing diversity of opinion and programming.³⁰⁵

The purpose of these rules is to promote media diversity, given the role of such within the field of democratic opinion-forming and the general social ability to learn.³⁰⁶

The Swiss government has assessed media concentration ambivalently. It has already said in the past that media concentration tends to endanger diversity of opinions and offerings and creates a risk for media pluralism. On the other hand, concentration processes can lead to professionalisation and increases in quality among those media that have been merged. In order for independent reporting to remain possible, broadcasters must exceed a critical size and have sufficient financial capacity to ensure their economic independence.³⁰⁷

The legal rule that media diversity must be respected when a concession is awarded or transferred can theoretically result in it no longer being possible to award concessions in small

³⁰³ Section 44(1)(g) RTVG; section 48(2) RTVG.

³⁰⁴ On the general preconditions for awarding a concession, see section 44 RTVG.

³⁰⁵ Section 45(3) RTVG.

³⁰⁶ BBI 2003 1615.

³⁰⁷ BBI 2003 1645.



geographical areas. Moreover, practice has shown that a considerable expenditure of time and effort may be involved in conducting an examination by UVEK, the Swiss ministry responsible, to see whether this condition is met. The lengthy procedure owes, on the one hand, to the need to consult the Swiss competition authority, the *Eidgenössische Wettbewerbskommission* (WEKO), which has to examine the question of market dominance.³⁰⁸ On the other hand, a procedure can be blocked or extended by means of legal remedies or referred to a superior judicial body. The adverse consequences of this are clear: the applicants face financial insecurity over a long period and there is a risk that the regional public service will cease to operate in the coverage area.³⁰⁹

One example of the difficulties that may arise is that of a procedure concerning the award of concessions to two radio broadcasters that led to their being in a state of limbo for a total of seven years.³¹⁰ Only a rejection decision by the European Court of Human Rights in mid- 2015 provided clarity, and resulted in the two concessions becoming legally final.

The observance of the rules on diversity would also have to be examined when a concession is transferred to another broadcaster, which can lead to the thwarting of the purpose of the transfer, which might be to rescue a broadcaster in financial difficulty.³¹¹

In order to enable a soundly-based, well-co-ordinated and efficient concession-awarding procedure, the legislators have removed the diversity requirement as a precondition for awarding a concession from the Federal Broadcasting Act. The remaining conditions should be enough to guarantee sufficient diversity of opinion and programming.

10.4.6. Abolition of the regional restriction on distribution

Until now, the regional broadcasters have only been allowed to distribute their programmes in their own coverage area,³¹² which has resulted in cable network operators being forced to encrypt TV channels to prevent the reception of them outside the coverage area. The purpose of this restriction on distribution was to ensure full coverage with regional services of equal quality. There was to serve as a guarantee that broadcasters concentrated on their own area with regard to programme content and did not focus for commercial reasons on possibly more attractive regions outside their concession area. The aim was also to avoid the possibility of broadcasters, especially from urban areas, limiting the commercial potential of neighbouring broadcasters and the resulting funding gap having to be filled using licence-fee money.³¹³

Owing to the new distribution technologies, especially IPTV and web streaming, this restriction has become more of a drawback for regional public service broadcasters than ever. For these reasons, an exception was introduced in 2013 permitting regional TV channels to also be distributed in digital format via lines outside the coverage area.³¹⁴ Account was taken of the fact that it is becoming increasingly easy for the public to receive digitally-transmitted TV channels, especially

³⁰⁸ Section 74(2) RTVG.

³⁰⁹ BBI 2013 5029.

³¹⁰ See the case chronology in the judgment of 23 April 2014 of the Swiss *Bundesverwaltungsgericht* (Federal Administrative Court), Department I, in the proceedings *Radio AG (in Gründung) v. Radio Argovia AG* and the Federal Department for Environment, Transport, Energy and Communication (UVEK), Case No. A 6569/2013.

³¹¹ BBI 2013 5029.

³¹² Section 38(5) RTVG.

³¹³ BBI 2003 1705.

³¹⁴ Section 37(2) RTVV.



with the rising number of internet TV services. Following the abolition of the restriction on distribution, network operators no longer have to pay the costs of programme encryption. Throughout Switzerland the public can be given uncomplicated access to reporting from all regions, and regional TV stations have better opportunities to reach more viewers.

10.5. Outlook

10.5.1. Public service broadcasting and imminent renewal of concessions

The question of what the future of regional public service TV will look like will again increasingly become part of the media policy agenda in Switzerland.

On the one hand, BAKOM has commissioned a comparative study in which the relevant overall conditions for regional TV in Western Europe are compared, business successes are highlighted and specific best practices and promising initiatives concerning the key parameters for the strategic development of regional broadcasters are outlined.³¹⁵

On the other hand, on 16 June 2016 the Swiss government published a report that discusses and analyses the public services provided by the SRG SSR and the regional broadcasters with a public service remit against the background of the technological and structural changes that have taken place.³¹⁶ In this report, the government establishes that, for reasons to do with democratic and social policy-making, Switzerland will in the future continue to need partly licence-fee funded independent public service radio, TV and internet services. The core remit of reporting on regional affairs and events is to be retained, but the government expects improvements to be made in distinguishing these reporting activities by regional public service broadcasters from those of purely commercial stations. The government will take account of this aspect³¹⁷ in connection with the renewal of the broadcasting concessions³¹⁸.

10.5.2. Success through co-operation?

An important recommendation is the promotion of co-operation models between the regional TV broadcasters or co-operation between them and the powerful public service broadcaster SRG SSR.

The study points out in this connection that the regional TV broadcasters will be able to pool resources, make savings and create synergies. The study calls for an “open, direct and constructive discussion” between the SRG SSR and regional TV broadcasters.³¹⁹

³¹⁵ Wagner-Hatfield consulting group, ‘Perspectives de développement de la télévision régionale’ (‘Prospects for regional television’), June 2015. Brief summary available in English at: <https://www.bakom.admin.ch/bakom/en/homepage/electronic-media/zahlen-und-fakten/studies/regional-tv--the-challenges.html>.

³¹⁶ *Bericht zur Überprüfung der Definition und der Leistungen des Service public der SRG unter Berücksichtigung der privaten elektronischen Medien*; government report of 17 June 2016 in response to motion 14.3298 of the Transport and Telecommunications Committee of the Council of States (KVF-S). The report is available at <https://www.bakom.admin.ch/bakom/de/home/das-bakom/organisation/rechtliche-grundlagen/bundesratsgeschaefte/bundesratsbericht-zum-service-public-im-mediabereich.html>

³¹⁷ *Ibid.*, section 14.2.1.1, p. 99; section 14.5, p. 114; section 15.3.1, p. 116.

³¹⁸ The term of all regional broadcasting concessions is due to end on 31 December 2019. They will probably be extended as it will first be necessary to await the outcome of the parliamentary discussions on the report on public service broadcasting.

³¹⁹ Wagner-Hatfield study, ‘Brief summary’, *op.cit.*, p. 15f.



In its report published at the end of 2015, The *Eidgenössische Medienkommission* (Federal Media Commission – EMEK), an independent body that advises the Federal Council on media issues, also proposed public-private partnerships between commercial broadcasters and the SRG SSR. In view of its importance for audiovisual production in Switzerland, the SRG SSR should, it said, promote and develop these productions and co-productions with private third parties, especially private media companies, both in the field of journalism and in the production of media content. The SRG SSR should therefore contribute to strengthening Switzerland as a media centre.³²⁰

In its report of 16 June 2016 on public service broadcasting, the government also recommends increased co-operation between the regional TV broadcasters, which will then be able to increase their programming diversity and achieve economies of scale. The government believes it is possible to establish a broad range of co-operative practices. Apart from exchanging individual programmes that they have produced in-house, broadcasters could jointly produce selected programmes. Along with the study, the government is calling for co-operation between the regional TV broadcasters and the SRG SSR, through which the SRG SSR's own productions could be made available after their first broadcast to regional public service broadcasting providers on an electronic platform. These broadcasters could enhance their programmes with SRG SSR content, the terms and conditions for accessing which would have to be clarified. On the other hand, the SRG SSR could distribute selected programmes and contributions from regional public service broadcasters, for example contributions that appeal to a wider audience.³²¹

Finally, in an open letter dated 8 January 2016, the SRG SSR made concrete proposals for technological, journalistic and financial co-operation with commercial Swiss media. They include:

- transmission free of charge of important indoor sports games (basketball, handball, floorball and volleyball) for regional stations as part of a three-year pilot project;
- training opportunities for journalists offered by commercial media;
- making know-how available in the field of HbbTV technology, especially in order to enable regional broadcasters to comply with the new obligation to provide subtitles;
- transmission of the content of regional TV programmes in connection with the national windows of the SRG programmes;
- distribution of selected content of regional TV stations on the SRG SSR's on-demand web player;
- launch of a joint "Swiss Channel" on YouTube.

It will be interesting to see whether the above proposals on improved co-operation take more concrete shape. At any rate, they provide a very promising basis for enabling Switzerland's regional TV broadcasters perhaps to improve the ways in which they meet their challenges.

³²⁰ *Service public Medien in der Schweiz*, Diskussionsbeiträge und Gestaltungsvorschläge der Eidgenössischen Medienkommission, published on 11 December 2015, section 10. 4, p. 32; The report is available at <http://www.emek.admin.ch/de/themen/service-public/uebersicht/>

³²¹ *Bericht zur Überprüfung der Definition und der Leistungen des Service public der SRG unter Berücksichtigung der privaten elektronischen Medien*, sections 14.2.3.1 and 14.2.3.2, p. 109; section 15.3.4, p. 117



11. United Kingdom

Deirdre Kevin, EAO, and Ronan Ó Fathaigh, IViR

11.1. General introduction

The regional audiovisual media system in the United Kingdom reflects the regions which coincide with the devolved nations of Northern Ireland, Scotland and Wales, and the government administrative regions in England.³²² There are two major networks: BBC One and ITV/STV/UTV that serve these regions. BBC One is a networked channel throughout the regions and currently has 12 regional windows in England, in addition to BBC Wales, BBC Scotland and BBC Northern Ireland. In the case of the BBC English regional channels, the main distinction between these are the news programmes that are broadcast twice per day, and usually a weekly current affairs programme. The second major network is the ITV/channel 3 licences. Of these 15 regional licences, all but two belong to ITV Plc, after many years of consolidation. STV (Scottish Television) has licences for two Scottish regions) and UTV (Ulster Television, now also a part of ITV) has the licence for Northern Ireland.

The regional television landscape also includes those “regions within the nations”. There are nine government administrative regions in England: North East, North West, Yorkshire and the Humber, East Midlands, West Midlands, East of England, London, South East, South West. The audiovisual media sector is regulated at the UK-level by the communications regulator Ofcom (Office of Communications), which has four advisory committees: one each for England, Northern Ireland, Scotland, and Wales.³²³

³²² For more detail see: Kevin D., “Snapshot: regional and local television in the United Kingdom”, European Audiovisual Observatory, Strasbourg, 2015,

http://www.obs.coe.int/documents/205595/264619/GB_Regional_TV_in_the_UK_April2015.pdf/ee0493e1-6ef7-4f00-8293-a13000ae641b.

³²³ Kevin D., op.cit.



11.2. Regulatory framework

In the United Kingdom, the main legislation for the media sector is the Communications Act of 2003.³²⁴ This act established the communications regulator Ofcom, which has a duty to “maintain and strengthen” public service broadcasting under the Communications Act.

Regarding public broadcasters, its responsibilities include ensuring:

(c) that those services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom and from around the world;

...

*(i) that those services (taken together) include what appears to Ofcom to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom.*³²⁵

The BBC works under an agreement with the government in the Royal Charter and Agreement.³²⁶ The public purposes of the BBC most relevant for the provision of news and information, and for the regional and local services, are: “sustaining civil society” (a), “representing the UK, its nations, regions and communities” (d); and “bringing the UK to the world and the world to the UK” (e). Notably, the current Royal Charter runs until 31 December 2016, and it is currently being reviewed by the UK government.³²⁷

For the ITV network (the Channel 3 licences), the programming obligations were updated by Ofcom (for a ten year period) in 2013.³²⁸ Channel 3 licensees have to meet positive requirements covering, for example, original productions/commissions, independent productions, news, regional production, and provision for the deaf or hearing impaired and blind or partially sighted. The updated requirements reduced the overall obligations for producing news. Hours of news per week range from 2.30 to 6 depending on the broadcaster (with ITV Wales, UTV and STV having the greatest obligations for hours of news produced).

Finally, in terms of local audiovisual media, the regulatory framework is contained in three main pieces of legislation: first, the Local Digital Television Programme Services Order,³²⁹ which set out the framework for licensing local television. In terms of content, local services are required to:

facilitate civic understanding and fair and well-informed debate through coverage of local news and current affairs (5a); reflect the lives and concerns of communities and cultural

³²⁴ Communications Act 2003, <http://www.legislation.gov.uk/ukpga/2003/21/contents>.

³²⁵ Communications Act 2003, section 264, <http://www.legislation.gov.uk/ukpga/2003/21/section/264>.

³²⁶ Department for Culture, Media and Sport, “Copy of Royal Charter for the continuance of the British Broadcasting Corporation”, October 2006, http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf.

³²⁷ See BBC Trust, “Charter Review”, http://www.bbc.co.uk/bbctrust/governance/charter_review.

³²⁸ Ofcom, “Channel 3 and Channel 5: Statement of Programming Obligations. Amendments to obligations for Channel 3 and Channel 5 ahead of a new licensing period”, 23 July 2013, <http://stakeholders.ofcom.org.uk/binaries/consultations/c3-c5-obligations/statement/statement.pdf>.

³²⁹ The Local Digital Television Programme Services Order 2012, <http://www.legislation.gov.uk/uksi/2012/292/contents/made>.



interests and traditions in that area or locality (5b); and include content that informs, educates and entertains and is not otherwise available through a digital television programme service which is available across the United Kingdom (5c).

At the end of 2015, Ofcom agreed to a request for a change in programming obligations from one of the local operators STV Glasgow.³³⁰ The service sought to reduce the level of first-run locally produced programming, but would retain the overall level of local programming, and in particular the large amount of news. This was followed in 2016 by the reduction of requirements for five other services.³³¹

Second, the Wireless Telegraphy Act 2006 (Directions to OFCOM) Order,³³² which required the communications regulator Ofcom to reserve spectrum for local television broadcasting. And third, the Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order,³³³ which was designed to give electronic programme guide prominence to local television services.

Of the other channels with PSB obligations, Channels 4 and 5 only have obligations regarding production at the regional level.³³⁴

11.3. Market overview

BBC One is the main generalist channel of the public broadcaster and is a networked channel with various regional windows. The BBC One channels in Scotland, Northern Ireland and Wales have programming opt-outs and their own continuity announcements. These three regional versions are more distinctive as they have a larger range of regional programming than the English regional windows. In addition, there are also regional versions of BBC Two (BBC Two Scotland, BBC Two Northern Ireland and BBC Two Wales) and HD versions of the channels.

In England each region has its own individual regional news and current affairs programme opt-out, as well as a limited amount of continuity. Some of the programming produced at the regional level is also redistributed throughout the network. The BBC has eleven separate regional television, radio and online services in England.

BBC Northern Ireland produces a wide range of programming.

Whilst generally following the schedules of the UK-wide BBC One, BBC One Scotland provides daily news broadcasts and offers programming specific to Scotland, such as the soap opera *River City* and a football programme.

³³⁰ Ofcom, "Local TV decision: STV Glasgow change request", http://licensing.ofcom.org.uk/binaries/tv/local-tv/glasgow/2016_05_Glasgow_decision_statement.pdf.

³³¹ Reynolds J., "Ofcom allows five local tv stations to cut local programming commitments". Press Gazette. 13 April 2016. <http://www.pressgazette.co.uk/content/ofcom-allows-five-local-tv-stations-cut-local-programming-commitments>.

³³² The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2012, <http://www.legislation.gov.uk/ukxi/2012/293/contents/made>.

³³³ The Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011, <http://www.legislation.gov.uk/ukxi/2011/3003/contents/made>.

³³⁴ Channel 4 and Channel 5 do not have obligations to provide local programming or news but do have obligations regarding commissioning programmes produced in Northern Ireland, Scotland, Wales, and the English regions. The quota for Channel 4 for programmes produced in the devolved nations will increase from the current level of 3% of volume and spend to 9% in 2020.



BBC Alba³³⁵ was launched in 2008. It is a joint venture between the BBC and MG Alba and broadcasts in Scottish Gaelic. BBC Alba has an average viewership of 637,000 adults over the age of 16 in Scotland each week.³³⁶ It produces a wide range of its own programming and both shares and receives some programmes from BBC Scotland.

BBC Wales (BBC Cymru Wales),³³⁷ based in Cardiff, produces a wide range of local programmes transmitted as "opt out" services on BBC One. These include news, current affairs, sport, arts and entertainment, drama, and children's programmes. BBC Wales also supplies programmes to the separate Welsh language channel, S4C.

Although available nationally in the UK, S4C (the public service channel in the Welsh language) has a regional (national in Wales) focus, and its purpose is to produce programming in the Welsh language. The S4C is obliged under the Communications Act 2003 to annually produce a Content Policy Statement.³³⁸ In doing this, it must consider any guidance or reports of Ofcom. According to the Programme Guidelines,³³⁹ S4C's corporate aim is to provide a comprehensive Welsh language television service, of high quality, which reflects and enhances life in Wales. It is governed by the S4C Authority. S4C was formerly funded partly by advertising revenue and via a direct grant from the government. The broadcaster's public funding and the use of the television licence fee are, since 2013, supervised by the BBC Trust. This arrangement is laid out in an Operating Agreement regarding the use of funds.³⁴⁰

ITV1 is the UK's main free-to-air commercial public service broadcaster. It is also the UK's regional channel (also known as Channel 3 licensees). The ITV network is not formally a national TV broadcaster, as it is made up of 15 regional licensees. The ITV Group provides a large amount of the common schedule of the regional broadcasters. ITN is the organisation currently 'nominated' by Ofcom to provide a high quality national and international news service to Channel 3 licensees. The programmes supplied by ITN must be transmitted live and simultaneously by the regional ITV licensees.

ITV is not owned by one single company, but this is very nearly the case. Thirteen of the regional licences are held by the ITV group,³⁴¹ and two by the Scottish Media Group. The purchase of the UTV channels in October 2015 means that just the two Scottish licences of STV are now independently owned.

The ITV network is funded by advertising revenue; the ITV licensees are what are referred to as "commercial public broadcasters". They have revenue models which are commercial-based, but retain some public service obligations.³⁴² Regional windows of the network also have regional advertising inserts. The channels with channel 3 licences (all the ITV channels) have the same daily schedules, and there are certain times when local programming is inserted. The services UTV and STV also have similar schedules, but have more local programming.

³³⁵ Alba is the Gaelic name for Scotland.

³³⁶ MG ALBA Annual Report 2012 | 13, may 2013, p. 24, <http://www.mgalba.com/downloads/reports/annual-report-12-13.pdf>.

³³⁷ Cymru is the Welsh name of Wales.

³³⁸ S4C, "Content Policy Statement 2013", 2013, http://www.s4c.co.uk/abouts4c/authority/pdf/e_datganiad_polisi_cynnwys_2013.pdf.

³³⁹ S4C, "Programme Guidelines", 10 March 2010, <http://www.s4c.co.uk/production/downloads/guidelines/S4C-programme-guidelines-10-03-10.pdf>.

³⁴⁰ BBC Trust, "Operating Agreement SR4", 2011, http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/s4c_governance/s4c_governance.pdf.

³⁴¹ ITV, <http://www.itv.com>.

³⁴² See, for example, the obligations under 11.2



11.4. Specific issues

The first issue of note is funding. Regional public service media in the UK is financed via the television licence fee (for BBC services and S4C). S4C was formerly funded partly by advertising revenue, and partly via a direct grant from the government. Since 2013, the government grant has been replaced by an agreement with the BBC Trust, which allocates a portion of the television licence fee to S4C. The ITV network, however, is funded by advertising revenue.

The new local channels licensed on DTT are varied in their funding and sources. Some are linked to important media groups such as the Scottish Television Group (STV), or the publishing group Archant. Others launched with the help of crowd-funding, for example Sheffield Live!. It is too early to judge whether these channels will survive, particularly given their different strengths in terms of backers. As agreed in the 2010 licence fee settlement, the BBC has committed to provide up to £40m for the purposes of supporting the Government's objectives for local TV. This is comprised of up to £25m in 2013/2014 towards capital costs, and up to £5m per year for three years to acquire content from the local TV services for use on the BBC's own services.³⁴³

The second point of interest is the audience share enjoyed by regional audiovisual media. Research carried out by the UK regulator Ofcom in 2009 indicated the importance of local news and information, including that "regional TV news is watched at least once a day by four fifths of adults," and that "local and regional news in particular helps to inform people about what is going on in their local community, while news and other types of local content contribute towards reflecting UK cultural identity and representing diversity and alternative viewpoints."³⁴⁴

Indeed, Ofcom research from 2014 has demonstrated the significant audience share of these regional services in the devolved nations,³⁴⁵ which lends weight to the assertion of the importance of regional broadcasting to the UK media landscape.

11.5. Recent developments

The analogue terrestrial switch-off took place in the UK in October 2012. In 2011, the government announced its intention to launch a total of 28 local channels on the DTT network. The financing of the start-up of the local DTT channels was partly financed by the BBC. There are certain programming requirements for the licensees of the new local DTT channels, as outlined by Ofcom. The local channels are expected to engage with "local democracy" and are specifically supposed to provide local news and current affairs, and "facilitate civic understanding and fair and well-informed debate through coverage of local news and current affairs". As noted above, there have already been some adjustments to the programming requirements of the local TV services, which could be indicative of the economic challenges of providing local programming.

As of March 2016, Ofcom had licensed 34 local television stations across the UK, including in Belfast, Birmingham, Brighton & Hove, Bristol, Cardiff, Edinburgh, Glasgow, Grimsby, Leeds,

³⁴³ Department for Culture, Media and Sport, "A new framework for local TV in the UK", July 2011,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/72920/Local-TV-Framework_July2011.pdf.

³⁴⁴ Ofcom, "Local and regional media in the UK", 22 September 2009, <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/lrmuk.pdf>.

³⁴⁵ Ofcom, "Communications Market Report 2014: Scotland", 7 August 2014,

http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr14/2014_CMRScotland.pdf.



Liverpool, London, Manchester, Newcastle, Norwich, Nottingham, Oxford, Plymouth, Preston, Sheffield, Southampton and Swansea.³⁴⁶ 20 stations have been launched, and a further 11 are due to launch in 2016.³⁴⁷

11.6. Current and future challenges

Finally, two issues of great significance for the future of regional audiovisual media in the United Kingdom is arguably the current review of the Royal Charter, and how the BBC will continue to be organised and funded. Notably, in relation to local television, the agreement with the BBC for the licence fee to fund local TV will end in 2017. Indeed, the BBC Trust's *Response to the Department for Culture, Media and Sport's Charter Review consultation* argued that the objects of the BBC's obligation to "[help] fund Local TV stations, have been Government projects with little or no link to the BBC and the arrangements have muddled accountability for delivery and value for money."³⁴⁸ In response, the UK government in its white paper *A BBC for the future: a broadcaster of distinction*, published in May 2016, stated that it will "provide greater freedom for the BBC to manage its own budgets" by phasing out protected funding for local television.³⁴⁹ However, the government nonetheless stated that it will "ensure that local television stations that are launched by 31 July 2017 and wish to receive this BBC support for their first three years of operation will receive it."

³⁴⁶ See Ofcom, "Applying for an L-DTPS Licence", <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/apply/>. See also Ofcom, "Local TV broadcasters", <http://licensing.ofcom.org.uk/tv-broadcast-licences/current-licensees/local-tv/>.

³⁴⁷ Department for Culture, Media and Sport, "A BBC for the future: a broadcaster of distinction", 12 May 2016, p. 96, <https://www.gov.uk/government/publications/a-bbc-for-the-future-a-broadcaster-of-distinction>.

³⁴⁸ BBC Trust, "Response to the Department for Culture, Media and Sport's Charter Review consultation", October 2015, p. 41, http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter_review/dcms_response.pdf.

³⁴⁹ Department for Culture, Media and Sport, "A BBC for the future: a broadcaster of distinction", cit., p. 7.



Part 3 – The future of regional and local broadcasting





12. Viable local and regional television channels

Jean-François Furnémont and Marc Janssen, Wagner & Hatfield

12.1. Introduction

In Brussels in 1968, the famous Belgian composer, songwriter and performer Jacques Brel staged his adaptation of the musical ‘Man of La Mancha’ (‘L’Homme de la Mancha’). One of the best-known songs from the show, entitled ‘The Impossible Dream: The Quest’ (‘La Quête’), presents the hero Don Quixote “dream[ing] the impossible dream” and “try[ing] when [his] arms are too weary to reach the unreachable star”.

The question is whether the viability of local and regional television channels (referred to here as ‘LRTV channels’) on the European audiovisual scene the “unreachable star” of national and regional audiovisual policies, and whether the stakeholders who still believe in them are the Don Quixotes of modern television, “dreaming the impossible dream” of seeing the LRTV channels survive in an environment in which so many parameters seem to be hostile to them.

On the face of it, it would appear that the answer to this question is yes (for at least two reasons, already mentioned in Chapters 2 and 3), although there are still grounds for optimism (Chapter 4). Despite the diversity of their situations (Chapter 5), we are able to identify a number of common elements that will determine the viability of LRTV channels (Chapter 6).

12.2. Hostile economic context

The first reason for pessimism is the effect of the economic and financial crisis that has been afflicting Europe since 2008 on the local television sector. The effects of the crisis have been felt throughout the audiovisual sector in Europe, but the LRTV channels have been by far the hardest hit, and their income (from both public and private sources) has fallen significantly.

For some LRTV channels, and even in a number of cases for the entire national audiovisual scene, this has had disastrous results. The Spanish LRTV landscape has been decimated, with several dozen LRTV channels, both public and private, having closed down. Despite being one of the countries least affected by the crisis, in Sweden the channel TV4 has stopped its regional variations of programmes; all that remains is a number of variations of advertising and microprogrammes that



are definitely profitable, such as weather forecasts. In France, the channel NRJ Paris, despite having the backing of a large-scale multimedia group and the benefit of a greater area of coverage than many national television channels in Europe, has decided not to keep up its authorisation. In addition, the channel Télé Toulouse, despite operating in an economically dynamic city, has gone into liquidation. In the United Kingdom, local television in London, the city with the most economic activity in Europe, has requested the regulatory authority for a dramatic cut-back in its obligations in terms of own production in order to ensure its survival.

12.3. Unfavourable developments in consumption modes

The second reason for the apparent gloomy future of the LRTV channels is that the development of alternative consumption modes is not to the advantage of the classic model of the LRTV channels. Although television is still a popular medium and viewers remain keen to consume local content, both these elements have to be considered in perspective.

While the linear consumption of television programmes has so far continued to defy the alarmist projections made at the introduction of on-demand consumption, the modes of linear consumption have undergone a transformation. Such changes are rarely favourable to the current model adopted by the LRTV channels: audiences are scattered among an increasing number of channels, original programmes are increasingly important but are often expensive to produce, and live broadcasting and event coverage has become more intense, while strong and firmly implanted brand names remain relatively robust.

The appeal of the 'local' nature of programmes should also be qualified. The local aspect usually consists of showing something local rather than discussing something local i.e. the channels produce game shows (or slightly different versions of international formats), cookery programmes and competitions, and reports and documentaries on matters concerning society. Programmes which focus on local or regional subdivisions of varying sizes within a given territory are much less likely to federate audiences, and indeed they encounter further difficulties in reaching out to their audiences. So, the more local the focus, the smaller the range of specific sociological characteristics; this means that the programmes cause division, rather than uniting people. A report concerning a particular town will rarely be of interest to a neighbouring town, for instance, and within the various neighbourhoods in the same town there are often very substantial social and cultural differences, rendering emulation and the topology of a feeling of community extremely complex. The frequently announced success of 'local' programmes should therefore be seen as indicative of the attractiveness of 'proximity' programmes rather than that of programmes focusing on the realities of a local geographical unit. This distinction is particularly important in the context of the LRTV channels, as they are based on (and guided by) the principle of developing comprehensive and original local news – a principle that is in fact most often expressed in the form of a regulatory obligation.

12.4. Grounds for optimism

These factors should however result neither in 'wait-and-see' fatalism nor the end of LRTV channels. Without being inappropriately optimistic, the "star" is not as unreachable as it seems, as long as a certain number of initiatives are established in certain areas. Considered individually, these



initiatives might seem minor, but together they would create an environment conducive to the viability of the LRTV channels.

These initiatives are by their natures extremely diverse. They may be taken under the authority of the public authorities, they may be instigated by the stakeholders themselves, or they may be a combination of both. Furthermore, they may take the form of either a formalised regulation or a self-regulating initiative.³⁵⁰ They include the following areas of intervention:

- ‘Findability’ and ‘prominence’: There is no point creating favourable legal and economic conditions without also ensuring equally favourable exposure conditions. An LRTV channel operating in an ‘ideal’ regulatory environment in an ‘ideal’ funding structure is not necessarily successful in terms of audience figures. In a media context characterised by abundance (not only of channels but, perhaps above all, of platforms), the matter of the ‘findability’ of these stakeholders among the weakest players in the media landscape is a fundamental issue. This raises questions regarding the must-carry obligation for the LRTV channels, of which they all need to take advantage in order to reach their audiences, and the cost of distribution, for which public funds may be received. Moreover, above all it raises the question of the numbering of the LRTV channels, including over the various platforms. This is already an important point today, but it will become increasingly important with the development of non-linear consumption, as will the possibility of finding the LRTV channels easily on the new platforms, whether they are open (as on the Internet) or closed (as on portals established by service distributors or manufacturers of connected televisions).
- Visibility: as for the first area of intervention, it would also be possible to consider allowing particularly visible slots to the LRTV channels’ content. In Bavaria and in many other German Länder, for example, LRTV channels have the benefit of a half-hour slot of broadcasting per day on one or two of the main national television channels. They also benefit from programme funding from the national channel, and also collect the advertising revenue generated by their slot.
- Collaboration among LRTV channels: this can range from programme syndication to common programming, or at least the harmonisation of their programme schedules, such as broadcasting the main newscast on all the LRTV channels simultaneously. This includes the creation of a common advertising agency or the joint organisation of brainstorming days on the future of LRTV channels and the challenges they face.
- Cooperation among LRTV channels and public- and private-sector media: this includes co-production of certain programmes, coverage of events, cross-promotion, etc.
- The development of initiatives aimed at capitalising on (and reinforcing) proximity with audiences and encouraging public engagement: this includes participation in the production of broadcasts or in editorial choices, citizen free-speech broadcasts, active engagement with viewers, production of on-the-spot broadcasts covering certain recurrent or occasional events, etc. Initiatives of this kind are particularly important when directed at young audiences, as one of the main challenges the LRTV channels face is the particularly high average age of its viewers.
- Presence on new platforms: this is with the provision that this reflects a real commitment and aims at originality, including for example, the creation of a common VOD platform, creation of a common local information portal.

³⁵⁰ A comprehensive list of these good practices is provided in the Wagner Hatfield study *op. cit.*



- Boosting and diversifying income: this can be achieved by, for example, developing new applications and marketing and promotional initiatives, crowdfunding, and production activities for local and regional businesses and institutions.

12.5. The absence of a model

The diversity of the initiatives which might contribute to the viability of the LRTV channels refers back to the diversity of the environments in which they exist. A comprehensive analysis of the regulatory and financial framework of LRTV channels across Europe reveals great diversity in the ways in which the legislators and regulators in the various countries may consider the LRTV channels in the absence of any European framework for harmonisation in this field.

With regard to regulations, it is perfectly obvious that the density of regulatory frameworks varies enormously. Above all this reflects the clear adoption of policies: where for example certain German Länder and the United Kingdom are of the position that giving the LRTV channels every opportunity means imposing as few rules on them as possible, France and the French-speaking community of Belgium take inspiration from the relatively rigid frameworks they apply to other national stakeholders, both private and public. It remains to be seen whether one approach preferable to the other. The reality of operating LRTV channels does not make it possible to establish any correlation between deregulation and economic success. LRTV channels on the audiovisual scene with the most liberal framework, those in the United Kingdom, still find it difficult to establish themselves in the market. Indeed the issue of liberalising or even abolishing certain rules is sometimes a false problem. For example, many LRTV channels complain that the framework of regulations is too rigid with regard to the broadcasting of commercial advertising. However, very few of them reach the maximum levels authorised, and it is questionable whether more advertising or new advertising techniques should be allowed when directed at viewers watching an LRTV channel rather than a channel broadcast nationwide.

There is great diversity in financing also, with 75% of the funding of the LRTV channels of the French-speaking Community of Belgium being from various public grants and initiatives and the LRTV channels in some of the Länder in Germany funding themselves to such an extent that they are almost completely independent of the public authorities. However, even in this last case it is hard to assess the effectiveness of one or other model in terms of the optimal use of public finances. Even disregarding the issues of the diversity and pluralism of the media, the political decision to leave a sector to its own devices with no form of public support may mean allowing an accumulation of company closures and losses of direct and indirect jobs. Furthermore, it may also mean missing an opportunity to construct a virtuous circle that could be advantageous to other jobs in the audiovisual sector.

We can also observe increasing diversity in the form and purpose that such public support can have. The United Kingdom has opted for an indirect approach, via the requirement imposed on the BBC to purchase a certain volume of production by LRTV channels. At the very least this constitutes a foreseeable financial income. It could also, in theory, result in greater visibility for the LRTV channels and in profitable synergies between them and the BBC, although so far current practice does not seem to confirm these hopes. The Flanders Region has decided to allocate some of its subsidies to specific actions, for example sub-titling certain programmes, and elsewhere an increasing number of programmes are being sponsored by public institutions, including those on tourism, culture, help for jobseekers, integration of handicapped people, etc; the aim being to contribute to the institution's missions.



12.6. Conclusion: determining elements

The diversity of both the issues at stake and current practices shows that there it would not be productive to attempt to transpose into one European country a model for the viability of LRTV channels that is considered to have been successful elsewhere. This is due to the fact that the situation of the LRTV channels is firmly rooted in the history and current characteristics of each audiovisual landscape. It is nevertheless possible to point to a number of determining elements.

The first is that the successful LRTV channels owe as much to endogenous factors, such as the creative dynamism of their teams, and the entrepreneurial determination of their managers, as to exogenous factors, such as regulations and public funding.

The second is that, beyond the conventional exogenous factors of regulations and funding, we should also include in our assessment the importance of elements that are more difficult to objectivise and measure, such as political support (and regulation) for the sector, as long as this is properly understood and consequently does not turn into political interference. Unfortunately this still often happens, mimicking the authorities' attempts to exert political control over public-sector broadcasters. It is even sometimes exacerbated at the local level by the feeling, common amongst many local political 'barons', that they can and should control everything on the screen, including their own image.

The last element is that, when they are present, positive endogenous factors seem bound to concentrate on two main issues: the need to accentuate the specific nature of the LRTV channels by investigating all local news; and the need to remedy their 'natural' commercial weakness by developing new economic models that are realistic as well as innovative.





13. Concluding remarks

Tarlach McGonagle and Nico van Eijk, IViR

It is clear from the preceding discussion that regional audiovisual media fulfil very important roles in pluralist, democratic societies. Nevertheless, they face considerable pressures that must be overcome if they are to remain viable in the ever-evolving media ecosystem.

As recognised by the Council of Europe’s Congress of Local and Regional Authorities, a first step towards ensuring the continued viability of regional audiovisual media would be formal and explicit recognition of their valuable contribution to democratic society in laws and policies.³⁵¹ It is also important for laws and policies to recognise that regional audiovisual media can take a variety of forms, particularly in the new media ecosystem.³⁵² As outlined in Chapter 4, regional audiovisual media are organised in diverse ways, including along public, private and community axes: as (distinct or associated) regional broadcasting companies, or as national broadcasters using regional channels, windows or studios. Moreover, the term ‘regional’ can have various proxies – like regional or minority languages. These differences, which are very relevant considerations for law- and policy-makers, demonstrate that in practice there is no blueprint for organising regional audiovisual media in a way that guarantees the realisation of their main aims.

A second step, as set out in the Explanatory Memorandum to the Congress’ 2014 texts, would be to create and maintain a favourable or enabling environment for regional audiovisual media. This could involve relevant regulation that not only recognises the specificity of regional audiovisual media, but also engages with that specificity in flexible and tailored ways, in order to stimulate and sustain regional audiovisual media.³⁵³ Certain obligations might transpire to be too costly (e.g., a 100% obligation to subtitle) or restrictive (e.g., excessive programming requirements). Similarly, according to the Congress, a flexible and tailored approach is also necessary when it comes to the scale of regional media:³⁵⁴ a regional television station covering millions of inhabitants is by nature different from a small scale community media station.

The proximity of regional audiovisual media to their social environment creates additional challenges for their independence. The risks of political influence and interference, and lack of transparency, are often higher than on the national level. In light of these risks, the Congress has

³⁵¹ Resolution 374 (2014) on the role of regional media as a tool for building participatory democracy, 15 October 2014, para. 7a; Recommendation 364 (2014) on the role of regional media as a tool for building participatory democracy, 15 October 2014, para. 8a.

³⁵² *Ibid.*

³⁵³ Explanatory Memorandum to *ibid.*, para. 60. See also para. 59.

³⁵⁴ *Ibid.*



invited the regional authorities of the Council of Europe's Member States to "put in place effective safeguards to prevent the risks of political influence and a lack of transparency in regional media, for example by declaring executive positions within regional media incompatible with holding a political mandate, and integrating political oversight of media financing within a system of checks and balances that guarantees editorial independence".³⁵⁵

Another goal of regulation is to foster media pluralism at the regional level. The importance of guaranteeing media pluralism and diversity is very pronounced at the regional level, due to considerations of political economy that are particular to regional audiovisual media. The communities and markets served by regional media tend to be smaller, more specific, and less lucrative than those served by media operating at the national and international levels.³⁵⁶ This has obvious implications for advertising and other sources of revenue available to regional audiovisual media. Such financial strictures can also lead to concentrations of ownership of regional audiovisual media. The production of regional content can be resource-intensive and presents a real challenge to the financial sustainability of regional media, especially in the current climate of economic cutbacks and austerity. In light of these observations and as recognised by the Congress, general measures to promote media pluralism may require specific adjustment in order to be optimally applied to regional media.³⁵⁷

Chapter 3 details how the EU's Media Pluralism Monitor (MPM) Project measures pluralism at the regional and local levels. As set out in this Chapter, MPM 2015 focused on three indicators in particular: 'Access to media of different social and cultural groups, and local communities'; 'Availability of media platforms for community media'; and 'Centralisation of the media system'. In MPM 2016, the approach will be centred on one new, consolidated indicator: 'Access to media for local/regional communities and for community media'.

Appropriate regulation is a necessary - but of itself, insufficient - feature of an enabling environment for regional audiovisual media. The far-reaching negative impact of the economic crisis and resultant cutbacks and austerity measures has been felt throughout the media sector, including at the regional level. This has given rise to a pressing need to secure adequate funding, for example through licence-fee or other fiscal revenues, subsidies, and advertising. As noted in Chapter 11, these financial challenges are exacerbated by the lack of wider appeal of certain types of specific, regional or local programming. When regional or local content is difficult to market, collaborative arrangements with national or mainstream media can ensure greater visibility and prestige and, in turn, offer wider audiences for such content.

A wide range of measures could be used to overcome the financial pressures that regional audiovisual media are facing. Chapter 11 provides a useful inventory of suggestions. These measures are not exclusively financial in nature, but include measures that aim to achieve greater visibility and findability for regional or local content, including on platforms such as electronic programme guides. Must-carry obligations to include regional audiovisual media could be one way to further these aims.³⁵⁸

³⁵⁵ Resolution 374 (2014), para. 7f.

³⁵⁶ For wide-ranging analysis of relevant issues, see generally: Gregory Ferrell Lowe and Christian S. Nissen, Eds., *Small Among Giants: Television Broadcasting in Smaller Countries* (Gothenburg, Nordicom, 2011). For analysis of the impact of market-related issues specifically on minority(-language) media, including in a changing media environment, see: Tom Moring, "Media Markets and Minority Languages in the Digital Age", *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 12, No. 4, 2013, 34-53 and Sally Broughton Micova, "Rights vs. Reality: Minority Language Broadcasting in South East Europe" *Journal on Ethnopolitics and Minority Issues in Europe* Vol. 12, No. 4, 2013, 54-79.

³⁵⁷ Resolution 374 (2014), para. 7e.

³⁵⁸ See, for example, Chapter 11 and the Explanatory Memorandum to the Congress' 2014 texts, para. 57.



Whereas the measures presented in Chapter 11 are largely dependent on state initiatives, others remain in the hands of the regional audiovisual media themselves. A certain amount of critical and creative self-reflection is called for, as well as the ability and willingness of regional audiovisual media to re-think their role and continue to play to their traditional strengths in a reconfigured media sector. Cooperative initiatives among regional audiovisual media could help to develop network effects and ensure wider dissemination of programming, as could the development of social media strategies for the promotion and distribution of content. The exploration of new inclusive forms of governance could also offer solutions, e.g., through introducing structures and processes that facilitate enhanced public participation in content production and crowd-funding. The chances of such initiatives proving successful would be improved by increasing emphasis on media literacy and digital skills training.

The introductory chapter to this publication discussed a selection of relevant Council of Europe instruments dealing (directly or indirectly) with regional audiovisual media. The final focus in that chapter was on the Congress of Local and Regional Authorities. The twin texts adopted by the Congress in 2014, dealing with the role of regional media as a tool for building participatory democracy, set out a possible pathway for enabling further engagement with relevant issues.

In its Resolution 374 (2014), the Congress instructed its Current Affairs Committee to “continue to address questions related to improving the functioning of regional media, and to ensure that the relevant good practices are disseminated to regional authorities, inter alia through their national and European associations” (para. 8). It also invited its Governance Committee to “include in its work programme, as aspects of good regional governance, the question of the good functioning of regional media, and to undertake a review of the existing legal framework and practices, leading to a new resolution and recommendation on the state and prospects of regional media in a reconfigured, new media environment” (para. 9). The journey continues.



EUROPEAN AUDIOVISUAL OBSERVATORY

Set up in December 1992, the European Audiovisual Observatory's mission is to gather and distribute information on the audiovisual industry in Europe.

The Observatory is a European public service body comprised of 41 member states and the European Union, represented by the European Commission. It operates within the legal framework of the Council of Europe and works alongside a number of partners and professional organisations from within the industry and with a network of correspondents.

Major activities of the Observatory are

- the Yearbook online service
www.yearbook.obs.coe.int
- the publication of newsletters and reports
www.obs.coe.int/publications
- the provision of information through the Observatory's Internet site
www.obs.coe.int
- contributions to conferences
www.obs.coe.int/events

The Observatory also makes available free-access databases, including:

IRIS Merlin

Database on legal information relevant to the audiovisual sector in Europe
www.merlin.obs.coe.int

MAVISE

Database on TV and on-demand audiovisual services and companies in Europe
www.mavise.obs.coe.int

AVMSDatabase

Database on the transposition of the AVMS Directive into national legislation
www.avmsd.obs.coe.int

LUMIERE

Database on admissions to films released in Europe
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European Audiovisual Observatory

76 Allée de la Robertsau – 67000 Strasbourg – France
Tel: +33 (0) 3 90 21 60 00 – Fax: +33 (0) 3 90 21 60 19
www.obs.coe.int – E-mail: info.obs@coe.int

Regional and local broadcasting in Europe

The structure of this study explores the following questions:

- What is the role of regional and local media in Europe?
- How is this role promoted by the actions and legal instruments of the Council of Europe?
- What are the national specific trends and developments in Europe on a country-by-country basis?
- Where does the future of regional and local media in Europe lie?

This IRIS *Special* report offers a much-needed overview of regional audiovisual media in Europe in three main sections.